

ARTICLE 12 PAYMENTS

§ 12.1 PROGRESS PAYMENTS

§ 12.1.1 Based upon Applications for Payment and all required supporting documentation submitted to the Architect and Owner by the Contractor and Certificates for Payment issued by the Architect and approved by the Owner, the Owner shall make progress payments on account of the Contract Sum to the Contractor as provided below and elsewhere in the Contract Documents. The parties acknowledge that the money that will be used to pay the Contractor is coming from the City pursuant to the GDA, D/B Agreement, or otherwise. The Contractor shall not be entitled to receive any payment from Owner until Owner receives payment for such services from the City. It is specifically understood and agreed that payments to the Contractor are dependent, as a condition precedent, upon Owner receiving payment therefor from the City. However, the Owner will still be liable for such amounts only to the extent that the City's failure to pay results as a direct result from a breach of the D/B Agreement by the Owner that in no way was due to a breach of this Contract by the Contractor.

§ 12.1.2 The period covered by each Application for Payment shall be one calendar month, ending on the last day of the month, or as follows:

§ 12.1.3 Provided that an Application for Payment is received by the Architect not later than the ____ day of a month, the Owner shall make payment to the Contractor not later than the ____ day of the ____ month. If an Application for Payment is received by the Architect after the application date fixed above, payment shall be made by the Owner not later than ____ (____) days after the Architect receives the Application for Payment. Contractor's monthly Applications for Payment shall be submitted on the first (1st) day of each month. Owner's payments shall be due (subject to Section 12.1.1) within thirty-five (35) days after Owner's receipt of the complete and final Applications for Payment. If complete and final Applications for Payment are received by the Owner and Architect after the application date established as set forth herein, payment shall be made by the Owner (subject to Section 12.1.1) not later than thirty-five (35) calendar days after the Owner receives the complete and final Applications for Payment. Contractor acknowledges that advances from the City, and therefore payments due under this Agreement, shall not be made more frequently than on a monthly basis.

§ 12.1.3.1 Except as may be otherwise agreed by Owner, Contractor, City, and Architect, on the 15th day of the month, (or the next business day thereafter if the 15th is not a business day), the Owner, the City, the Architect, and the Contractor shall meet to review a preliminary draft of the Applications for Payment (hereinafter referred to as a "Pencil Draws") prepared by the Contractor (one for each garage). The Contractor shall revise the Pencil Draws in accordance with any objection or recommendation of either the Owner or the Architect that is consistent with the requirements of the Contract Documents. Such revised Pencil Draws shall be resubmitted by the Contractor to the Owner as the Applications for Payment, which applications shall be due as set forth in Section 12.1.3 above. The Contractor shall also submit with each Application for Payment a written narrative describing the basis for any item set forth in the Application for Payment that does not conform to instructions of the Owner or the Architect in connection with any applicable Pencil Draw.

§ 12.1.4 With each Application for Payment, the Contractor shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or Architect to demonstrate that cash disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to the Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment; such evidence as may be necessary to demonstrate costs incurred or to be incurred by him on account of the Cost of the Work during the period covered by the Application for Payment. In addition, the Contractor shall keep and make available to Owner upon the Owner's request payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached and any other evidence required by the Owner, City, or Architect to demonstrate that disbursements already made by the Contractor on account of the Cost of the Work equal or exceed (1) progress payments already received by the Contractor; less (2) that portion of those payments attributable to Contractor's Fee; plus (3) payrolls for the period covered by the present Application for Payment; plus (4) retainage provided in Section 12.1.8, if any, applicable to prior progress payments. In addition to other required items, such Application for Payment shall be accompanied by a duly executed and acknowledged Contractor's Sworn Statement showing all Subcontractors with whom the Contractor has entered into subcontracts, the amount of each subcontract, the amount requested for any Subcontractor in the Application for Payment and the amount to be paid to the Contractor from such progress payment, together with similar sworn statements from all first-tier Subcontractors for whom payment

is requested in such Application for Payment; lien waivers from Contractor and all Subcontractors in the forms attached hereto as Exhibit D; all invoices received from vendors; the certification set forth in Exhibit F or such other certifications as Lender reasonably requires; and such other information, documentation and materials as the Owner, the Architect or the Lender may reasonably require. With each Application for Payment, Contractor also shall provide copies of all Subcontractors' monthly applications for payment to substantiate Contractor's Application for Payment.

§ 12.1.5 Each Application for Payment shall be based on the most recent schedules of values submitted by the Contractor in accordance with the Contract Documents. The schedules of values, attached hereto as Exhibit C and incorporated herein by this reference, shall allocate the entire Guaranteed Maximum Price among the various portions of the Work, except that the Contractor's Fee and Contingency Fund shall be shown as ~~a single separate~~ items. The schedules of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect or Owner may require. ~~This~~ These schedules, unless objected to by the Architect or Owner, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 12.1.6 Applications for Payment shall be submitted separately as to each of the Block 1/2, Block 4, and Block 5 garages and shall show the percentage of completion of each portion of the Work for each garage as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Contractor on account of that portion of the Work for which the Contractor has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ 12.1.7 Subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed, separately for each garage, as follows:

- .1 take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute ~~shall~~ may be included as provided in ~~Section 7.3.8 of AIA Document A201-1997~~;
- .2 add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 add the Contractor's Fee, ~~less retainage of — (—)~~. The Contractor's Fee shall be computed upon the Cost of the Work described in the two preceding ~~Sections~~ Clauses at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that ~~Subparagraph~~ Section, shall be an amount that bears the same ratio to that fixed-sum fee as the Cost of the Work in the two preceding ~~Sections~~ Clauses bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .4 subtract the aggregate of previous payments made by the Owner;
- .5 subtract the shortfall, if any, indicated by the Contractor in the documentation required by ~~Section 12.1.4~~ the Contract Documents to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- .6 subtract amounts, if any, for which the Architect has withheld or nullified a Certificate for Payment as provided in ~~Section 9.5 of AIA Document A201-1997~~ and other amounts properly held by the Owner and the time of each progress payment.

§ 12.1.8 Except with the Owner's prior approval, payments to Subcontractors shall be subject to retainage of not less than ten (10%). The Owner and the Contractor shall agree upon a mutually acceptable procedure for review and approval of payments and retention for Subcontractors.

§ 12.1.9 In taking action on the Contractor's Applications for Payment, the Owner and Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Contractor and shall not be deemed to represent that the Architect has made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 12.1.4 or other supporting data; that the Architect has made exhaustive or continuous on-site inspections or that the Architect has made examinations to ascertain how or for what purposes the Contractor has used amounts previously paid on account of the Contract. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 12.1.10 The Owner will withhold from each progress payment an amount equal to ten percent (10%) of the amount due (except for General Conditions Costs & Categories and Contractor's Fee) until the Work for the respective garage is Substantially Complete ("Retainage"). Retainage for each garage shall be calculated on a line-by-line basis using the approved Schedules of Values attached hereto as Exhibit C. At the time of Substantial Completion of each garage, the Owner shall continue to retain 2.5% of the amount due or 200% of the reasonable cost to correct or complete incorrect or incomplete Work, whichever amount leaves a greater amount withheld by the Owner. "Reasonable cost" as used in the previous sentence shall be measured according to standard costs published by R.S. Means. Notwithstanding the foregoing, if the Contractor or any of its Subcontractors is a non-resident contractor per the relevant Maryland tax code provision, the Owner shall be entitled to continue to withhold 3% of the non-resident contractor's retainage until the requirements of Md. Tax General Code Ann. § 13-803, et seq., are satisfied. The aggregate of the Retainage shall be paid to Contractor as part of the Final Payment for the respective garage in accordance with Section 12.2 herein.

§ 12.1.11 For each progress payment, Contractor will deliver to Owner a complete and accurate invoice, AIA G702 and G703, for completed but unpaid Work for each garage for the then-current period, notarized and based upon the Work completed and accompanied by lien waivers (forms for which are attached hereto as Exhibit D), invoices from Subcontractors and suppliers (showing the full Subcontract amount and the amount billed for the current period) and other such documentation as Owner or the City may reasonably require and as otherwise may be set forth herein. At Owner's request, Contractor shall furnish with each Application for Payment a statement accounting for the disbursement of funds received from Owner, in a form reasonably acceptable to Owner.

§ 12.1.12 Contractor will pay Subcontractors and suppliers all amounts approved by Owner in each Certificate for Payment within seven (7) days after receiving payment from Owner. Contractor will not withhold any sum paid to Contractor by Owner (in addition to the retainage withheld by Owner) from Subcontractors or suppliers because of disputes without first consulting with and gaining the approval of Owner, which approval shall not be unreasonably withheld. If Contractor fails to make such timely payments as due, Owner, at its election, may directly pay the Subcontractors and suppliers and such payments shall be deemed to be payments to Contractor under this Contract. The Owner's right to elect to make direct payments shall not give rise to an obligation for the Owner to do so for the benefit of Contractor, a Subcontractor, or anyone else.

§ 12.1.13 Progress payments will not constitute acceptance by Owner of such Work in place or stored materials, nor will these payments be construed as a waiver of any right or claim by Owner regarding such Work or stored materials.

§ 12.1.14 In addition to the requirements set forth elsewhere in the Contract Documents, progress payments shall not be due until the following conditions have been achieved.

- (1) The Contractor has submitted a complete, correct and sworn Application for Payment in an Owner-approved format showing all money paid out and costs incurred to the date indicated in the Application for Payment;
- (2) The Contractor has submitted an executed subcontract for each Subcontractor and supplier requesting payment;
- (3) The Contractor has submitted, on forms attached hereto as Exhibit D or other forms acceptable to the Owner, conditional lien waivers for the amount of the current request and unconditional lien waivers for the total amount of payments to date for the Contractor, Subcontractors and suppliers;

(4) The Contractor has submitted a certification that all Work has been performed in accordance with the requirements of the Contract Documents; and

(5) The Owner and the Architect have approved the Application for Payment.

§ 12.1.15 Owner shall not be obligated to perform any act under this Contract as to which the surety under the performance bond maintained by Contractor (the "Surety") demands its consent until Contractor has provided Owner with a written consent therefor from the Surety.

§ 12.2 FINAL PAYMENT

§ 12.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Contractor (subject to Section 12.1.1) when the following conditions have been satisfied:

- .1 the Contractor has fully performed the Contract except for the Contractor's responsibility to correct Work as provided in Section 12.2.2 of AIA Document A201-1997, and to satisfy other requirements, if any, which extend beyond final payment; and
- .2 a final Certificate for Payment has been issued by the Architect and approved by Owner in writing;:-
- .3 a final Application for Payment and a final accounting for the Cost of the Work and all required supporting documentation (including, but not limited to, final lien waivers from the Contractor and all Subcontractors in forms set forth as Exhibit D) have been submitted by the Contractor and reviewed by the Owner's accountants; and
- .4 all conditions to final payment set forth in the Contract Documents have been satisfied.

§ 12.2.2 The Subject to Section 12.1.1, the Owner's final payment to the Contractor shall be made no later than thirty (30) days after satisfaction of the conditions to final payment. the issuance of the Architect's final Certificate for Payment, or as follows:

§ 12.2.3 The Owner's accountants will review and report in writing on the Contractor's final accounting within thirty-five (35) 30 days after delivery of the final accounting of each garage to the Architect and Owner by the Contractor. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Contractor's final accounting, and provided the other conditions of Section 12.2.1 for final payment set forth in the Contract Documents have been met, the Architect will, within seven days after receipt of the written report of the Owner's accountants, either issue to the Owner a final Certificate for Payment with a copy to the Contractor, or notify the Contractor and Owner in writing of the Architect's reasons for withholding a certificate as provided in Section 9.5.1 of the AIA Document A201-1997. The time periods stated in this Section 12.2.3 supersede those stated in Section 9.4.1 of the AIA Document A201-1997.

§ 12.2.4 If Subject to Sections 4.4 through 4.6 of the General Conditions of the Contract, if the Owner's accountants report the Cost of the Work as substantiated by the Contractor's final accounting to be less than claimed by the Contractor, the Contractor shall be entitled to demand arbitration of initiate litigation regarding the disputed amount without a further decision of the Architect. Such demand for arbitration shall be made by the Contractor within thirty (30) days after the Contractor's receipt of a copy of the Architect's final Certificate for Payment. Contractor shall notify the Owner if Contractor has any specific objections (and shall generally specify those objections). failure to demand arbitration within this 30 day period shall result in the substantiated amount reported by the Owner's accountants becoming binding on the Contractor. Pending a final resolution by arbitration litigation, the Owner shall pay the Contractor the amount certified in the Architect's final Certificate for Payment and approved by Owner.

§ 12.2.5 [Not Used.] If, subsequent to final payment and at the Owner's request, the Contractor incurs costs described in Article 7 and not excluded by Article 8 to correct defective or nonconforming Work, the Owner shall reimburse the Contractor such costs and the Contractor's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If the Contractor has participated in savings as provided in Section 5.2, the amount of such savings shall be recalculated and appropriate credit given to the Owner in determining the net amount to be paid by the Owner to the Contractor.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 The Contract may be terminated by the Contractor, or by the Owner for convenience, as provided in ArticleSection 14 of AIA Document A201-1997. However, the amount to be paid to the Contractor under Section 14.1.3 of AIA Document A201-1997 shall not exceed the amount the Contractor would be entitled to receive under Section 13.2 below, except that the Contractor's Fee shall be calculated as if the Work had been fully completed by the Contractor, including a reasonable estimate of the Cost of the Work for Work not actually completed.

§ 13.2 The Contract may be terminated by the Owner for cause as provided in ArticleSection 14 of AIA Document A201-1997. The amount, if any, to be paid to the Contractor under Section 14.2.4 of AIA Document A201-1997 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

§ 13.2.1 Take the Cost of the Work incurred by the Contractor to the date of termination; Upon termination of this Contract, Contractor shall execute and deliver all such papers and documents, and take all such steps, including the legal assignment of any or all subcontracts, as Owner may require.

§ 13.2.2 [Not Used.] Add the Contractor's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 5.1.2 or, if the Contractor's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and

§ 13.2.3 [Not Used.] Subtract the aggregate of previous payments made by the Owner.

§ 13.3 [Not Used.] The Owner shall also pay the Contractor fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Contractor that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Contractor shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Contractor, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Contractor under such subcontracts or purchase orders.

§ 13.4 The Work may be suspended by the Owner as provided in ArticleSection 14 of AIA Document A201-1997; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Section 14.3.2 of AIA Document A201-1997 except that the term "profit" shall be understood to mean the Contractor's Fee as described in Sections 5.1.2 and Section 6.4 of this Agreement.

ARTICLE 14 MISCELLANEOUS PROVISIONS

§ 14.1 Where reference is made in this Agreement to a provision of AIA Document A201-1997 or another Contract Document, the reference refers to that provision as amended or supplemented by the parties in writing and by other provisions of the Contract Documents.

§ 14.2 Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located.

(Insert rate of interest agreed upon, if any.)

The prime rate as set forth in The Wall Street Journal plus one percent (1%) per annum as stated from time to time calculated daily.

(Usury laws and requirements under the Federal Truth in Lending Act, similar state and local consumer credit laws and other regulations at the Owner's and Contractor's principal places of business, the location of the Project and elsewhere may affect the validity of this provision. Legal advice should be obtained with respect to deletions or modifications and also regarding requirements such as written disclosures or waivers.)

§ 14.3 The Owner's representative is:

(Name, address and other information.)

As described in Section 3.1

§ 14.4 The Contractor's representative is:
(Name, address and other information.)

Kevin Higgins, Andrew Linden, and James Owens
The Whiting Turner Contracting Company
300 East Joppa Road, 8th Floor
Towson, MD 21286

§ 14.5 Neither the Owner's nor the Contractor's representative shall be changed without ten days' written notice to the other party.

§ 14.6 Other provisions:

§ 14.6.1 DISPUTE RESOLUTION

§ 14.6.1.1 Pending resolution of any dispute but subject to Sections 9.7 and 14.1 of the General Conditions of the Contract, including all appeals on any suit filed by the Owner or the Contractor against the other party, the Contractor agrees to diligently continue full and timely performance of all obligations under this Agreement, and the Owner shall continue to pay amounts properly due to the Contractor.

§ 14.6.1.2 OWNER AND CONTRACTOR SPECIFICALLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY COURT WITH RESPECT TO ANY CONTRACTUAL, TORTIOUS OR STATUTORY CLAIM, COUNTERCLAIM OR CROSS-CLAIM AGAINST THE OTHER ARISING OUT OF OR CONNECTED IN ANY WAY TO THE PROJECT OR THIS AGREEMENT BECAUSE THE PARTIES HERETO, BOTH OF WHOM ARE REPRESENTED BY COUNSEL, BELIEVE THAT THE COMPLEX COMMERCIAL AND PROFESSIONAL ASPECTS OF THEIR DEALINGS WITH ONE ANOTHER MAKE A JURY DETERMINATION NEITHER DESIRABLE NOR APPROPRIATE.

§ 14.6.1.3 This Agreement will be construed and interpreted according to the substantive laws of the State of Maryland, without regard to the choice of law/conflict of laws provisions thereof. The parties consent to exclusive venue in and personal jurisdiction of the Maryland state and federal courts.

§ 14.6.2 In the event of any dispute between the Owner and Contractor, the Contractor agrees that it shall only assert its claim against the Owner. Notwithstanding anything to the contrary contained in any other provision of this Agreement, the Owner's directors, officers, members, agents or employees of any of them shall not have any personal liability under this Contract for any obligation at any time, it being understood that Contractor shall look solely to the assets of Owner for the satisfaction of any claim Contractor has against Owner, its directors, officers, members, agents or employees of any of them.

§ 14.6.3 [Not Used.]

§ 14.6.4 Contractor shall review all reports and information provided to it by Owner, and if such reports or information are incomplete or if Contractor needs any additional information to provide its services, Contractor shall promptly notify Owner in writing. The Owner's review and/or approval of any documents provided or service performed by Contractor or anyone for whom Contractor may be responsible shall not relieve Contractor of its responsibilities under this Agreement or under applicable law.

§ 14.6.5 Within thirty (30) days after execution of the Agreement, the Contractor shall prepare for the Owner's review, and the Contractor shall use, a plan for efficient and effective use of the Project site and for secure storage of materials and equipment by the Contractor any and/or all Subcontractors.

§ 14.6.6 The Contractor warrants that all manufacturers or other warranties on all materials and equipment furnished by the Contractor shall run directly to or be specifically assigned to the Owner and that if a warranty is ineffective because the material or equipment is defectively installed under this Contract, the Contractor shall be responsible to the Owner for the defective installation.

§ 14.6.7 The Contractor has provided the Owner a list, attached hereto and incorporated herein as Exhibit E, of the names and estimated term of assignment of all personnel of the positions of superintendent and above who shall perform the Work ("Supervisory Personnel"). The Contractor shall inform the Owner in writing, of the estimated period of construction under each such person's supervision. None of these Supervisory Personnel shall be removed from the Project without the Owner's Representative's consent, and the Owner's Representative shall have the authority to approve or reject the Supervisory Personnel and any replacements.

§ 14.6.8 This Agreement may be executed in multiple counterparts, each of which will be deemed an original agreement and all of which together will constitute one agreement.

§ 14.6.9 This Agreement is a negotiated document, and in the event of any dispute between the parties, this Agreement will not be construed against either party by virtue of the fact that the party may have prepared it.

§ 14.6.10 By executing this Contract, as well as each Modification to this Contract, the Contractor certifies to the following:

1. The price contained in this Contract, as well as in each Modification to this Contract has been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition as to any matter relating to such prices with any other bidder for this Project or with any competitor of the Contractor;
2. The prices which have been quoted in this Contract, as well as in each Modification to this Contract, have not been knowingly disclosed prior to bid opening to any other bidder or competitor; and
3. No attempt was made by the Contractor to induce any other person, partnership, corporation or other entity to submit or not to submit a bid on this Project.

§ 14.6.11 If any term or provision of this Agreement, or the application thereof to any person or circumstances, shall be invalid or unenforceable to any extent, the remainder of this Agreement or the application of this Agreement to persons or circumstances other than those against whom or which such term or provision is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permissible by law.

§ 14.6.12 LENDER'S REQUIREMENTS

§ 14.6.12.1 The Contractor shall provide to the Owner's lender ("Lender") any Project information or certification that the Lender reasonably requires.

§ 14.6.12.2 The Contractor agrees to execute such documents as may be reasonably required by the Lender, including, but not limited to, a consent to assignment of this Agreement to the Lender in the form attached hereto as Exhibit M or as otherwise required by the Lender. The Contractor also shall agree to such modifications to this Agreement as the Lender may reasonably require, provided the Contractor's costs or time of performance are not increased, unless this Agreement is equitably adjusted.

§ 14.6.12.3 Contractor acknowledges that Owner may be required to provide evidence to the City, the Lender, and/or partners in the Project that the Project was completed in accordance with the Contract Documents and to the best of the Contractor's knowledge in compliance with all applicable environmental and other laws, rules, codes and regulations bearing on the performance of the Work. Upon request by the Owner, Contractor shall provide the Owner, the City, the Lender, and/or partners in the Project designated by the Owner with a certification of compliance to such effect.

§ 14.6.13 OSHA COMPLIANCE. The Contractor shall comply, and shall bind any Subcontractor who enters the site to comply, with the Occupational Safety and Health Act of 1970 and all standards and regulations issued pursuant thereto (the "Act"). The Contractor agrees, and shall bind any such Subcontractor to agree, to indemnify and to save the Owner harmless from any loss, damage, fine penalty or expense whatsoever (including, without limitation,

attorneys' fees and court costs) that the Owner may suffer as a result of the failure or alleged failure of the Contractor or its Subcontractors to comply with the requirements of the Act.

§ 14.6.14 EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION. The contractor represents that it and its Subcontractors are equal opportunity employers as described in Section 202 of Executive Order No. 11246 dated September 24, 1965, as amended, and it agrees that it and its Subcontractors will comply with the provisions of said Executive Order during the performance of this Contract.

§ 14.6.15 Contractor acknowledges that Owner is subject to the easements listed in Exhibit K hereto (the "Construction Easements"). Contractor agrees that it will perform the Work in accordance with the Construction Easements, including but not limited to the notice, tie-back, underpinning, crane swing, and other construction-related provisions thereof. In no event will Contractor perform an act that violates or causes a default under the Construction Easements. Notwithstanding the foregoing, in the event a Construction Easement set forth in Exhibit K is terminated according to the provisions thereof as a result of circumstances other than the Contractor's fault, the Contractor may seek an equitable adjustment to the Guaranteed Maximum Price to reflect additional costs, if any, resulting from that termination.

§ 14.6.16 Contractor acknowledges that the Owner's development of the Project is subject to certain Use Permit Conditions (together, the "Zoning Conditions"), as are attached as Exhibit L hereto. Contractor agrees that it shall perform the Work in accordance with the Zoning Conditions, including but not limited to complying with any notice provisions therein. In no event will Contractor perform an act that violates the Zoning Conditions. Contractor shall have no responsibility for design-related errors or omissions that are found to violate the Zoning Conditions.

§ 14.6.17 All matters that relate to the termination or expiration of this Agreement, or that in the normal course would not occur or be effectuated until after such termination or expiration, or that by their nature should be expected to continue after termination or expiration of this Agreement, as well as all rights and obligations of the parties pertaining thereto, will survive any termination or expiration of this Agreement and will be given full force and effect notwithstanding any termination or expiration of this Agreement, but such survival will not operate to extend any applicable statute of limitations.

§ 14.6.18 The Owner and the Contractor hereby represent and warrant to each other that all necessary corporate action has been taken to enter into and fulfill this Agreement and that the person signing this Agreement on behalf of the Owner and Contractor, respectively, is duly authorized to do so.

§ 14.6.19 Neither the Contractor nor any principal, director, officer, shareholder or employee of the Contractor shall accept for its or their own benefit any trade commission, discount, or similar payment or any personal or business benefit in connection with activities undertaken pursuant to this Agreement. Any such benefits offered by vendors and the like shall be for the sole and exclusive account of, and are hereby irrevocably assigned to the Owner and the City.

§ 14.6.20 Upon reasonable notice during regular business hours, the Owner, City, and their respective agents shall have the right, from time to time, to review and audit the books and records of the Contractor relating to the Contractor's performance of this Agreement. The Contractor shall maintain such books and records at the Project site or at its offices in Towson, Maryland.

§ 14.6.21 During and after the term of this Agreement, the Contractor will not divulge, disclose or otherwise communicate any information obtained by it concerning the Owner or City, or other sensitive or proprietary information, to any person or entity other than those involved with the development of the Project who have a need to know such information, as necessary in the reasonable conduct of the Contractor's business, or as may otherwise be required by applicable law unless the Owner and City each consent in writing to such disclosure; provided, however, that in no event shall the Contractor be deemed in breach of this obligation if the Contractor discloses any such information based on its reasonable determination that such disclosure does not violate the terms of this Section 14.6.21.

§ 14.6.22 THIRD-PARTY BENEFICIARY

§ 14.6.22.1 It is the express intent of both the Owner and Contractor that the City be a third-party beneficiary of this Contract. This Contract is entered into for the purpose and object of providing an express and direct benefit to the

City. Owner and Contractor intend to confer a right of action upon the City to recover for any breach or nonperformance of this Contract. As a convenience to the Contractor, the City shall make payments due from the Owner to the Contractor under this Agreement directly by wire transfer of funds to the Contractor's account. Nothing in this provision or anything else in this Contract, including any payments to be made pursuant to this Section 14.6.22.1, is intended to nor shall it make Contractor a third-party beneficiary of any agreement between the Owner and the City, nor provide any basis for Contractor to enforce any of the terms of such agreement, including but not limited to payment provisions, against the City.

§ 14.6.22.2 Contractor shall include the following in each of its agreements with its Subcontractors:

It is the express intent of both the Contractor and Subcontractor that the City be a third-party beneficiary of this Contract. This Contract is entered into for the purpose and object of providing an express and direct benefit to the City. Contractor and Subcontractor intend to confer a right of action upon the City to recover for any breach or nonperformance of this Contract. Nothing in this provision or anything else in this Contract is intended to nor shall it make Subcontractor a third-party beneficiary of any agreement between the Owner and the City, nor provide any basis for Subcontractor to enforce any of the terms of such agreement, including but not limited to payment provisions, against the City.

§ 14.6.23 Contractor shall provide to Owner all information reasonably necessary to comply with applicable critical structures applications and requirements.

ARTICLE 15 ENUMERATION OF CONTRACT DOCUMENTS

§ 15.1 The Contract Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 15.1.1 The Agreement is this executed 1997 edition of the Standard Form of Agreement Between Owner and Contractor, AIA Document A111-1997, as modified.

§ 15.1.2 The General Conditions are the 1997 edition of the General Conditions of the Contract for Construction, AIA Document A201-1997, as modified, appearing as Exhibit G hereto. All references herein to AIA Document A201-1997 shall mean the modified document appearing as Exhibit G.

§ 15.1.3 [Not Used.] The Supplementary and other Conditions of the Contract are those contained in the Project Manual dated _____, and are as follows:

Document	Title	Pages
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§ 15.1.4 The Specifications are those listed in Exhibit N hereto, contained in the Project Manual dated as in Section 15.1.3, and are as follows:

(Either list the Specifications here or refer to an exhibit attached to this Agreement.)

Section	Title	Pages
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§ 15.1.5 The Drawings are those listed in Exhibit N hereto, as follows, and are dated — unless a different date is shown below:

(Either list the Drawings here or refer to an exhibit attached to this Agreement.)

Number	Title	Pages
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§ 15.1.6 The Addenda, if any, are those listed in Exhibit N hereto, as follows:

Number

Date

Pages

Portions of Addenda relating to bidding requirements are not part of the Contract Documents unless the bidding requirements are also enumerated in this Article 15.

§ 15.1.7 Other Documents, if any, forming part of the Contract Documents are as follows:

(List here any additional documents, such as a list of alternates that are intended to form part of the Contract Documents. AIA Document A201-1997 provides that bidding requirements such as advertisement or invitation to bid, Instructions to Bidders, sample forms and the Contractor's bid are not part of the Contract Documents unless enumerated in this Agreement. They should be listed here only if intended to be part of the Contract Documents.)

All Exhibits hereto

ARTICLE 16 INSURANCE AND BONDS

(List required limits of liability for insurance and bonds. AIA Document A201-1997 gives other specific requirements for insurance and bonds.)

The Contractor shall provide performance and payment bonds. See General Conditions Section 11.5.

The Contractor shall provide insurance. See General Conditions Article 11.

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Contractor, one to the Architect for use in the administration of the Contract, and the remainder to the Owner.

OWNER

CONTRACTOR

RD ROCKVILLE GARAGE, LLC,
a Maryland Limited Liability Company

THE WHITING TURNER CONTRACTING COMPANY

By: RD Maryland Avenue Limited Partnership,
a Maryland Limited Partnership, Manager

By:

By: RD Commerce Street, LLC, a
Maryland limited liability company,
General Partner

Name:

Title:

By: S.J. Ross Associates, Inc., a
Maryland Corporation, Manager

Date Signed: 2005

By:
Scott J. Ross, President

Date Signed: 2005

DRAFT

AIA Document A201™ - 1997

General Conditions of the Contract for Construction

for the following PROJECT:

(Name and location or address):

Rockville

THE OWNER:

(Name and address):

THE ARCHITECT:

(Name and address):

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 OWNER
- 3 CONTRACTOR
- 4 ADMINISTRATION OF THE CONTRACT
- 5 SUBCONTRACTORS
- 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS
- 7 CHANGES IN THE WORK
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- 9 PAYMENTS AND COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 INSURANCE AND BONDS
- 12 UNCOVERING AND CORRECTION OF WORK
- 13 MISCELLANEOUS PROVISIONS
- 14 TERMINATION OR SUSPENSION OF THE CONTRACT

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

This document has been approved and endorsed by The Associated General Contractors of America

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ARTICLE 1 GENERAL PROVISIONS

§ 1.1 BASIC DEFINITIONS

§ 1.1.1 THE CONTRACT DOCUMENTS

The Contract Documents consist of the Agreement between Owner and Contractor (hereinafter the Agreement), General Conditions of the Contract (~~General, Supplementary and other Conditions~~), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, or (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Architect and approved by the Owner. ~~Unless Except as specifically enumerated in the Agreement, the Contract Documents do not include other documents such as bidding requirements (advertisement or invitation to bid, Instructions to Bidders, sample forms, the Contractor's bid or portions of Addenda relating to bidding requirements). All Application and Certificate of Payment, Certificate of Substantial Completion, and other forms used during construction shall be the current AIA form, or modifications thereto or other form approved by Owner and Architect.~~

§ 1.1.2 THE CONTRACT

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Architect and Contractor, (2) between the Owner and a Subcontractor or Sub-subcontractor (except as set forth in Sections 5.3 and 5.4), (3) between the Owner and Architect or (4) between any persons or entities other than the Owner and Contractor. ~~The Architect shall, however, be entitled to performance and enforcement of obligations under the Contract intended to facilitate performance of the Architect's duties.~~

§ 1.1.3 THE WORK

The term "Work" means all required excavation, base building and interior construction required by and reasonably inferable from the Contract Documents. The Work includes all labor, materials, equipment and services, including but not limited to delivery, storage, handling and installation of all materials and equipment, as well as related and incidental work, provided or to be provided by the Contractor to fulfill the Contractor's obligations, as set forth in the Contract Documents and as performed in accordance with the Contract Documents and applicable Legal Requirements (as defined in Agreement § 2.2). ~~the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.~~

§ 1.1.4 THE PROJECT

The Project is the total construction of all which the Work performed under the Contract Documents. ~~Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.~~

§ 1.1.5 THE DRAWINGS

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams. Locations and dimensions thereon are in some cases schematic and diagrammatic. Actual dimensions shall include those dimensions in accordance with revised and approved Shop Drawings and those dimensions based on field verification.

§ 1.1.6 THE SPECIFICATIONS

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

§ 1.1.7 THE PROJECT MANUAL

The Project Manual is a volume assembled for the Work which may include the bidding requirements, sample forms, Conditions of the Contract and Specifications.

§ 1.1.8 KNOWLEDGE, RECOGNITION AND DISCOVERY

The terms "knowledge," "recognize," and "discover," their respective derivatives, and similar terms in the Contract Documents, as used in reference to the Contractor, shall be interpreted to mean that which the Contractor knows, recognizes, or discovers, in the exercise of reasonable care, skill and diligence. Analogously, the expression "reasonably inferable" and similar terms in the Contract Documents shall be interpreted to mean that which a contractor, performing the Work (including the Preconstruction Services) and familiar with the Project and projects of a similar scope, would reasonably understand through the exercise of reasonable care, skill, and diligence. As to the terms set forth in this Section, the standard of care, skill and diligence shall be that of an experienced construction contractor, and not that of a design professional.

§ 1.1.9 GENERAL REQUIREMENTS

The General Requirements are a series of general, administrative and procedural requirements to prepare for, to construct, or to complete the Work. For this Project, the words "General Requirements" and "Division 1" are interchangeable and equal in meaning.

§ 1.1.10 SAFETY

When the word "safety," or any derivative thereof, is used in the General Documents, it shall be construed to mean "safety and health."

§ 1.1.11 CONTRACTOR'S SOLE COST OR EXPENSE

When the words "Contractor's sole cost," "Contractor's sole expense," or words of similar affect are used in the Contract Documents, it shall be construed to mean that the cost or expense is a non-reimbursable expense under the Agreement.

§ 1.1.12 WORK PACKAGE

The term "Work Package" means Drawings and Specifications, along with the required studies, design reports and other explanatory attachments, for a coordinated portion of the Work. Work Packages shall be prepared by the Architect and other qualified professional consultants or specialists. A Work Package shall be designated as either "Design Development Submission", "Construction Document Submission" or "For Construction."

§ 1.2 CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS

§ 1.2.1 The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required ~~only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary~~ to produce the indicated results. Full-size or large-scale details or drawings shall govern small-scale drawings ~~that the former are intended to amplify~~. Dimensions shall be figured rather than determined by scale or rule. Where the Drawings and Specifications conflict with each other or with themselves, the Architect will decide which ~~conflicting requirement governs~~. If the Contractor believes that the Architect's decision causes an increase in the Cost of the Work or Contract Time, the Contractor may make a claim in accordance with Section 4.3.5.

§ 1.2.2 Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade, and Contractor shall be responsible for performing the Work, at no additional cost, regardless of the arrangement and organization of the Drawings and Specifications.

§ 1.2.3 Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

§ 1.2.4 If any item or material shown on the Drawings is omitted from the Specifications, or vice-versa (except when the Drawings and Specifications clearly exclude such omitted item), and when such item or material is clearly required to complete the detail shown or specified, the Contractor shall furnish and install such item or material of the type and quality established by the balance of the detail shown and specified at no increase to the Guaranteed Maximum Price.

§ 1.2.5 Where a typical or representative detail is shown on the Drawings, this detail shall constitute the standard for workmanship and materials throughout corresponding parts of the Work.

§ 1.2.6 Any Summary of Work as outlined in the Specifications shall not be deemed to limit the work required by the Contract Documents. The Contractor and each Subcontractor shall be responsible for thoroughly examining all Drawings, including all details, plans, elevations, sections, schedules and diagrams, as well as all measurements and dimensions, for each particular type of work, and for coordinating the Work described in the Drawings with the related Specifications. The Contractor shall also be responsible for determining the exact scope of work for each type of work and for checking cross-references of work excluded from any division. The Guaranteed Maximum Price is deemed to be based on a complete installation as indicated in and reasonably inferable from the Contract Documents.

§ 1.2.7 The Drawings are intended to show the arrangement, design and extent of the Work and are partly schematic in nature. They are not to be scaled for roughing-in measurements or used as shop drawings.

§ 1.3 CAPITALIZATION

§ 1.3.1 Terms capitalized in these General Conditions include those which are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 1.4 INTERPRETATION

§ 1.4.1 In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 1.5 EXECUTION OF CONTRACT DOCUMENTS

§ 1.5.1 The Contract Documents shall be signed by the Owner and Contractor. ~~If either the Owner or Contractor or both do not sign all the Contract Documents, the Architect shall identify such unsigned Documents upon request.~~

§ 1.5.2 By executing the Contract, the Contractor warrants that he has closely inspected the Project site as well as the conditions of adjacent properties and has recorded to his satisfaction the physical conditions of existing properties, familiarized himself with the local conditions under which the Work is to be performed, and correlated his observations with the requirements of the Contract Documents. ~~Claims for additions to the Contract Time or the Guaranteed Maximum Price caused solely by the failure of the Contractor to familiarize itself with readily ascertainable conditions at the Project site will not be allowed. The Contractor shall satisfy itself as to the accuracy of all grades, elevations, dimensions, and locations. In all cases of interconnection of its Work with existing or other work, it shall verify at the Project site all dimensions relating to such existing or other work. Any errors due to the Contractor's failure to so verify all such grades, elevations, dimensions, or locations shall be promptly rectified by the Contractor without any increase in the Guaranteed Maximum Price. Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Contract Documents.~~

§ 1.6 OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE

§ 1.6.1 The Drawings, Specifications and other Contract Documents, ~~documents,~~ including those in electronic form, even if prepared by the Contractor or a Subcontractor, ~~Architect and the Architect's consultants~~ are property of the Owner or Architect, as may be set forth in the Owner's Agreement with the Architect. ~~Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one (1) record set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by the Architect or the Architect's consultants, and unless otherwise indicated the Architect and the Architect's consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of such Drawings, Specifications, or other documents, Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect and/or Owner, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not to be used by the Contractor or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of the Owner, Architect and the Architect's consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other~~

documents prepared by the Architect and the Architect's consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the Architect's consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Owner's, Architect's or Architect's consultants' copyrights or other reserved rights.

§ 1.7 CONFIDENTIALITY

§ 1.7.1 The Contractor warrants and represents that the Contractor shall not knowingly or negligently communicate or disclose at any time to any person or entity any information in connection with the Work or the Project, except (i) with prior written consent of the Owner, (ii) information that was in the public domain prior to the date of the Part 2 Design/Build Agreement, (iii) information that becomes part of the public domain by publication or otherwise not due to any unauthorized act or omission of the Contractor, (iv) as may be required to perform the Work or by any applicable law, or (v) as necessary in the reasonable conduct of the Contractor's business.

§ 1.7.2 The Contractor shall cause all Subcontractors or any other person or entity performing any services, or furnishing any materials or equipment, for the Work to warrant and represent all items set forth in this Section 1.7.

§ 1.7.3 The representations and warranties contained in this Section 1.7 shall survive the complete performance of the Work or earlier termination of this Agreement.

§ 1.7.4 Any and all inventions and discoveries, whether or not patentable, conceived or made by the Contractor, which are based substantially on the Owner's or City's proprietary information shall be the sole and exclusive property of the Owner or City, as appropriate. The Contractor agrees to disclose fully and promptly to the Owner all such inventions and discoveries. Upon request by the Owner, the Contractor agrees to assign, or cause to be assigned, such inventions and discoveries to the Owner or City, as appropriate. Further, the Contractor shall execute, or cause to be executed, all applications, assignments or other instruments which the Owner may deem reasonably necessary to enable the Owner or City, as appropriate, at their expense, to apply for, prosecute and obtain patents in any country for said inventions and discoveries, or to assign and transfer to the Owner or City, as appropriate the entire right, title and interest thereto.

ARTICLE 2 OWNER

§ 2.1 GENERAL

§ 2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise agreed to by the parties, provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 2.1.2 [Not Used.] The Owner shall furnish to the Contractor within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER

§ 2.2.1 The Owner shall, at the written request of the Contractor, prior to commencement of the Work and thereafter, furnish to the Contractor reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Contract. Furnishing of such evidence shall be a condition precedent to commencement or continuation of the Work for which such compensation is required. Appropriation of the money necessary to pay for the Work under this Contract by the City as part of its Capital Improvements Program shall be considered reasonable evidence under this Section. After such evidence has been furnished, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

§ 2.2.2 Except for permits and fees, including those required under Section 3.7.1, which are the responsibility of the Contractor under the Contract Documents, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent

changes in existing facilities. If the Contractor becomes aware of any such approvals or permits that are the Owner's responsibility, Contractor shall promptly notify the Owner and Architect of the requirement in writing.

§ 2.2.3 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 2.2.4 Information or services required of the Owner by the Contract Documents shall be furnished by the Owner upon written request of the Contractor with reasonable promptness and shall be complete and accurate to the best of Owner's knowledge, information and belief. Any other information or services relevant to the Contractor's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Contractor of a written request for such information or services. Contractor shall review all documents and information received from the Owner and, if the documents or information are inadequate or if Contractor needs additional information, Contractor shall notify Owner immediately in writing.

§ 2.2.5 Unless otherwise provided in the Contract Documents, the Contractor will be furnished, free of charge, five (5) such copies of Drawings and Project Manuals, as are reasonably necessary for execution of the Work.

§ 2.2.6 Except for written directives from Owner to Contractor or in the event of Owner's fault or negligence, the Owner's participation in the Project shall in no way relieve the Contractor of its duties and responsibilities under applicable law or the Contract Documents.

§ 2.2.7 The Owner shall not be responsible for the resolution of differences or disputes between or among the Contractor, Subcontractors or Sub-subcontractors.

§ 2.3 OWNER'S RIGHT TO STOP THE WORK

§ 2.3.1 If the Contractor fails, after notice, to correct Work which is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or persistently fails to carry out Work in accordance with the Contract Documents or disregards the instructions of Architect or Owner when based on the requirements of the Contract Documents, the Owner may issue a written order to the Contractor to stop the portion of the Work that is not being performed in accordance with the Contract Documents or such instructions, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

§ 2.4 OWNER'S RIGHT TO CARRY OUT THE WORK

§ 2.4.1 If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness or fails within such seven (7) day period to commence and continue the elimination of the cause of any stop work order issued under Section 2.3.1, the Owner may after such seven day period give the Contractor a second written notice to correct such deficiencies within a three day period. If the Contractor within such three day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case an appropriate Change Order shall be issued deducting from payments then or thereafter due the Contractor the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's and Owner's Representative's additional services made necessary by such default, neglect or failure. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect. If payments then or thereafter due the Contractor are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner.

ARTICLE 3 CONTRACTOR

§ 3.1 GENERAL

§ 3.1.1 The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

§ 3.1.2 The Contractor shall perform the Work in accordance with the Contract Documents.

§ 3.1.3 The Contractor shall not be relieved of obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the Contractor.

§ 3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

§ 3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, the Contractor shall carefully study and compare the various Drawings and other Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.2.3, shall take field measurements of any existing conditions related to that portion of the Work and shall observe any conditions at the site affecting it. Contractor also shall verify field conditions and shall carefully compare the Contract Documents with the field measurements, dimensions, elevations, conditions, and other information known to the Contractor. The Contractor shall employ a licensed surveyor to locate and stake out the Work and establish necessary reference and bench marks. The Contractor shall work from established bench marks and reference points, lay out and correctly establish all lines, levels, grades and locations of all parts of the Work and be responsible for their accuracy and proper correlation with Work and established data. These obligations are for the purpose of facilitating construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, any errors, inconsistencies or omissions discovered by the Contractor, including any requirements that may be contrary to any Legal Requirement, shall be reported promptly to the Owner in writing and to the Architect as a properly prepared, timely RFI request for information in such form as the Architect or Owner may require.

§ 3.2.1.1 Contractor's request for information, interpretation, or clarification ("RFI") shall be made to Architect in writing with a copy to the Owner on an RFI form furnished by Architect. Contractor is to submit a copy of the form completely filled out with the request clearly stated and with reference to all applicable Drawings by detail and Specifications made by section and paragraph. RFIs are to be numbered sequentially (1, 2, 3, 4, etc.) and shall indicate the subject and description of the RFI, submission date, to whom submitted, and required response date. Architect will respond within a reasonable time and return a single copy to Contractor. Contractor will copy and distribute to all parties affected by response.

§ 3.2.1.2 If the Contractor submits an excessive number of RFIs as to which the information requested in the RFI is clearly contained in the Contract Documents, or should have been known by the Contractor exercising reasonable care, skill and diligence, and the Owner incurs additional costs to the Architect for the Architect's review, analysis, response or processing of such RFIs, the Contractor shall reimburse the Owner for such costs.

§ 3.2.2 Any design errors or omissions noted by the Contractor during this review shall be reported promptly to the Architect, but it is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional unless otherwise specifically provided in the Contract Documents. The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to the Contractor shall be reported promptly to the Owner and the Architect.

§ 3.2.3 If the Contractor believes that additional cost or time is involved because of clarifications or instructions issued by the Architect in response to the Contractor's notices or requests for information pursuant to Sections 3.2.1 and 3.2.2, the Contractor shall make Claims as provided in Sections 4.3.6 and 4.3.7. If the Contractor fails to perform the obligations of Sections 3.2.1 and 3.2.2, the Contractor shall pay such costs and damages to the Owner as would have been avoided if the Contractor had performed such obligations; however, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents unless the Contractor recognized such error, inconsistency, omission or difference and knowingly failed to report it to the Architect.

§ 3.2.5 The Contractor hereby specifically acknowledges and declares that upon agreement as to the Guaranteed Maximum Price for the Work, such agreement constitutes a representation by him that, subject to Agreement Section 5.2.1.1, as to the portion of the Work subject to the Guaranteed Maximum Price the Contract Documents are sufficient to enable the Contractor to determine the cost of such work as shown in the Contract Documents.

§ 3.3 SUPERVISION AND CONSTRUCTION PROCEDURES

§ 3.3.1 The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention in accordance with the Contract Documents, all Legal Requirements, and the prevailing construction standards and practices for producing public parking garages. The Contractor shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract, ~~unless the Contract Documents give other specific instructions concerning these matters.~~ If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Contractor shall evaluate the jobsite safety thereof and, except as noted stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely written notice to the Owner and Architect and shall not proceed with that portion of the Work without further written instructions from the Architect. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any loss or damage to the extent resulting therefrom. If the Contractor is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Contractor, the Owner shall be solely responsible for any resulting loss or damage.

§ 3.3.2 ~~The~~ With regard to the performance of the Work, the Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work or supplying materials for or on behalf of the Contractor or any of its Subcontractors.

§ 3.3.3 The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 3.3.4 The Contractor shall coordinate all field work and shop drawings of the various trades prior to installation of the Work. In spaces where various installations cannot be accommodated, the Contractor shall, prior to fabrication or installation of the Work, notify the Architect and the Owner and shall cooperate with the Architect and the Owner in developing a solution to the problem. The Contractor shall be solely responsible for coordinating the various trades involving the location and size of all sleeves, electrical outlets, inserts, piping, conduits, hangers, ducts and similar installations. The Contractor agrees that all such installations shall be clear of obstructions and shall be constructed in a manner presenting an orderly appearance.

§ 3.3.5 The Contractor shall provide construction quality control services throughout the Work.

§ 3.4 LABOR AND MATERIALS

§ 3.4.1 Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ 3.4.2 The Contractor may make substitutions only in accordance with the Contract Documents and with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order.

§ 3.4.3 The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Contract. The Contractor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Contractor shall use its best efforts to minimize the likelihood of any strike, work stoppage, or other labor disturbance and shall only use labor capable of working harmoniously with all trades and crafts.

§ 3.4.4 The Contractor shall maintain an adequate labor force at all times for the expeditious and proper completion of the Work. All workmen and Subcontractors shall be skilled in their respective trades.

§ 3.4.5 Any employee of the Contractor or any employee of a Subcontractor whose work is unsatisfactory to the Owner or who is considered by the Owner to be unskilled or who is otherwise reasonably objectionable to the Owner shall be dismissed from the Work by the Contractor upon written notice from the Owner.

§ 3.4.6 The Contractor shall provide and maintain all temporary storage on the Project site as required for his use. The Owner shall approve the locations and length of time of storage, and these locations shall be subject to relocation upon the Owner's request.

§ 3.5 WARRANTY

§ 3.5.1 The Contractor warrants to the Owner and the City Architect that materials and equipment furnished under the Contract will be of good quality, of recent manufacture, and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, that the Work will be performed in a good and workmanlike manner, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may shall be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. Modifications, extensions, attachments to, completion of, or repair to systems in the Work by others (including the Owner or tenants performing tenant improvement work), including without limiting the generality of the foregoing the electrical, HVAC, plumbing, security and sprinkler systems, shall not void the Contractor's warranty so long as the same are done in accordance with the original design and installation standards and manufacturer's requirements and warranties. If required by the Owner, City, or Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.5.2 Contractor shall issue in writing to the Owner and the City as a condition precedent to the Final Payment, a General Warranty reflecting the conditions of Section 3.5.1 for all Work under the Contract.

§ 3.6 TAXES

§ 3.6.1 The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor which are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

§ 3.7 PERMITS, FEES AND NOTICES

§ 3.7.1 Unless otherwise provided in the Contract Documents, the Contractor shall secure, and pay for, and as soon as practicable furnish the Owner with copies or certificates of, the following permits: building permit and other permits and governmental fees, licenses and inspections necessary for proper execution and completion of the Work which are customarily secured after execution of the Contract and which are legally required when bids are received or negotiations concluded.

- (1) Street access permits;
- (2) Permits for elevator, mechanical, plumbing and electrical work; and
- (3) All other applicable construction trade permits.

§ 3.7.2 The Contractor shall comply with and give notices required by laws, ordinances, rules, regulations, and lawful orders and other requirements of public and private authorities applicable to performance of the Work. Contractor shall coordinate its Work with public or private authorities, such as utility companies, as required or advisable for performance of the Work. The Contractor shall procure and obtain all bonds required of the Owner or the Contractor by the municipality in which the Project is located or any other public or private body with jurisdiction over the Project. In connection with such bonds, the Contractor shall prepare all applications, supply all necessary backup material, and furnish the surety with any required personal undertakings.

§ 3.7.2.1 If any of the Work is required to be inspected or approved by any public or private authority, the Contractor shall cause such inspection and approval to be performed. No inspection performed or failed to be performed by the Owner, any public or private authority shall constitute a waiver of any of the Contractor's

obligations or be construed as an approval or acceptance of any latently defective or deficient Work or any part thereof.

§ 3.7.3 It is not the Contractor's responsibility to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations. However, if the Contractor observes that portions of the Contract Documents are at variance therewith, the Contractor shall promptly notify the Architect and Owner in writing, and necessary changes shall be accomplished by appropriate Modification. In addition to the foregoing, the Contractor shall inform itself fully of all Legal Requirements relating to the performance of the Work, shall comply with all Legal Requirements and shall cause all of its Subcontractors to similarly comply with all Legal Requirements.

§ 3.7.4 If the Contractor performs Work ~~knowing it that it knows~~ to be contrary to ~~laws, statutes, ordinances, building codes, and rules and regulations without such notice to the Architect and Owner,~~ the Legal Requirements, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

§ 3.8 ALLOWANCES

§ 3.8.1 The Contractor shall include in the ~~Contract Sum~~ Guaranteed Maximum Price all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

§ 3.8.2 Unless otherwise provided in the Contract Documents:

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses contemplated for stated allowance amounts shall be included in the allowances, except that Contractor's Fee, General Conditions Costs, insurance, and bond costs, which shall be included in the Contract Sum ~~Guaranteed Maximum Price~~ but not in the allowances;
- .3 whenever costs are more than or less than allowances, the ~~Contract Sum~~ Guaranteed Maximum Price shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

§ 3.8.3 Materials and equipment under an allowance shall be selected by the Owner in sufficient time to avoid delay in the Work.

§ 3.8.4 Section 3.8 applies to allowances other than the Garage 4 allowance that is described in and subject to Agreement Section 5.2.1.1.

§ 3.9 SUPERINTENDENT

§ 3.9.1 The Contractor shall employ a competent superintendent, a project manager, and necessary assistants who shall be in attendance at the Project site during performance of the Work. The project manager and superintendent shall represent the Contractor, and communications given to the project manager and superintendent shall be as binding as if given to the Contractor. Important communications shall be confirmed in writing. Other communications shall be similarly confirmed on written request in each case. The Owner reserves the right to review and approve or disapprove the project manager and superintendent, and any replacement for such positions, in Owner's reasonable discretion until completion of all Work.

§ 3.10 CONTRACTOR'S CONSTRUCTION SCHEDULES

§ 3.10.1 The Contractor shall, as set forth in the Agreement, submit a detailed progress schedule for the entire Project ("Construction Schedule") which (i) provides a graphic representation of all activities and events that will occur during performance of the Work; (ii) identifies each phase of construction and occupancy; and (iii) sets forth dates that are critical in ensuring the timely and orderly completion of the Work in accordance with the requirements of the Contract Documents ("Milestone Dates"). The Construction Schedule is attached as Exhibit A to the Agreement. The Contractor, promptly after being awarded the Contract, shall prepare and submit for the Owner's

and Architect's information a Contractor's construction schedule for the Work. The schedule shall not exceed time limits current under the Contract Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Contract Documents, and shall provide for expeditious and practicable execution of the Work.

§ 3.10.2 The Contractor shall prepare and keep current, for the Architect's and Owner's approval, a schedule of submittals which is coordinated with the Contractor's construction schedule and allows the Architect reasonable time to review submittals.

§ 3.10.3 The Contractor shall perform the Work in ~~general~~ accordance with the most recent schedules submitted to and approved by the Owner, ~~and Architect.~~

§ 3.10.4 The Construction Schedule shall provide for the most expeditious and practicable execution of the Work. The Contractor shall also work closely with the Owner to confirm that the Construction Schedule accurately reflects the status of the Project. The Contractor's Construction Schedule shall be updated every month by the Contractor and submitted to the Owner. Contractor is responsible for expediting the Work, identifying potential conflicts and coordination problems that could affect the Contract Time and proposing measures to avoid such problems.

§ 3.10.4.1 Whenever it becomes apparent from the updated Construction Schedule or progress report that any milestone date previously established by the Construction Schedule may not be met, the Contractor shall, at the Owner's request, take any or all of the following actions with no increase to the Guaranteed Maximum Price or Contract Time (unless the delay is caused by an event set forth in Section 4.3.8.1 of these General Conditions thereby permitting adjustment of the Guaranteed Maximum Price and/or Contract Time under Section 4.3.8.2 and Section 4.3.5.1 of these General Conditions):

- (a) Increase construction manpower to substantially eliminate the back-log of work and return the Project to schedule;
- (b) Increase the number of working hours per shift, shifts per day or the amount of construction equipment or any combination of the foregoing which will substantially eliminate the back-log of work and return the Project to schedule;
- (c) Reschedule activities to concurrently accomplish activities, to the maximum degree practicable, in the time required by the Contract Documents.

If the Contractor fails to take any of these actions within seventy-two (72) hours after receiving notice from the Owner, the Owner may (i) take action to attempt to return the Project to schedule and (ii) deduct the cost of such actions from the monies due or to become due to the Contractor, unless the delay is due to a reason articulated in Section 4.3.8.1. If the delay is due to a reason articulated in Section 4.3.8.1, the Contractor shall submit to the Owner a recovery plan upon the Owner's request. The Owner may exercise the rights furnished pursuant to this Section 3.10.4 as frequently as the Owner deems necessary to ensure that the Contractor's performance of the Work will comply with any Milestone Dates and Substantial Completion Date set forth in the Contract Documents.

§ 3.10.5 Each month the Contractor shall submit to Owner a monthly status report ("Monthly Status Report"). The Monthly Status Report shall summarize the work performed during the preceding month and shall set forth the milestones achieved.

§ 3.10.6 If the Contractor fails for any month to submit accurate and complete schedules or the Monthly Status Reports as required, then Owner may, at any time, withhold one-half of the Contractor's General Conditions Costs and Fee for that month. Upon submission of the outstanding updated schedule(s) or report(s), any amount(s) so withheld shall be released and paid to the Contractor.

§ 3.11 DOCUMENTS AND SAMPLES AT THE SITE

§ 3.11.1 The Contractor shall maintain at the site for the Owner one (1) record copy of the Drawings, Specifications, Addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one (1) record copy of approved Shop Drawings, Product Data, Samples

and similar required submittals. These shall be available to the Owner and the Architect and shall be delivered to the Architect for submittal to the Owner upon completion of the Work.

§ 3.11.2 The Contractor shall permit the Owner and anyone designated by Owner to enter upon the Project site, inspect the Work and all materials to be used in the construction thereof, and examine all Drawings and Specifications, shop drawings and other Contract Documents which are or may be kept by the Contractor or its Subcontractors at the Project site. The Contractor shall cooperate and shall cause all of its Subcontractors to cooperate with the Owner. For each inspection by Owner, the Contractor shall make available, on demand, daily log sheets covering the period from the date of the immediately preceding inspection and showing the date, weather, Subcontractors on the job, number of workers and status of the Work. Although the Architect, Owner and any Lender shall have no obligation to do so, they shall have the right to inspect any material or equipment at any stage of development or fabrication, whether specified or noted, including, but not limited to the manufacturer's plant or mill. Such inspection shall not release the Contractor from any responsibility or liability with respect to such material or equipment. No inspection, test or payment shall be construed as constituting or implying acceptance of the Work or affect the continuing rights of Owner hereunder after acceptance of the completed Work.

§ 3.11.3 For the duration of the Project, the Contractor shall maintain and update monthly, with completed-to-date "As-Built" notations, a designated set of Drawings which shall be available at the Project site for the Owner's and the Architect's inspection at any time. These documents shall be known as the "As-Built Drawings" and shall contain the documents listed hereunder. The information given therein shall include, but not be limited to: (i) the actual location of the underground utilities and appurtenances as referenced to permanent surface improvements; (ii) the location of internal utilities and appurtenances concealed in building structures; and (iii) significant changes during the construction process and significant detail not shown in the original Contract Documents. The As-Built Drawings are to be kept accurately. No work shall be permanently concealed until the required information has been recorded.

§ 3.11.4 Each of the As-Built Drawings shall be clearly marked "Project Record Copy," maintained in good condition, available at all times for inspection by the Owner or the Architect and not used for construction purposes.

§ 3.11.5 The Contractor shall submit weekly to the Owner and Architect copies of its Daily Reports (typed or legibly written), to be received by the Owner and Architect the second business day after the week of the report activity. The contents and format of the Daily Reports shall be Contractor's standard format as approved by the Owner and shall include, but not be limited to, manpower and equipment counts, weather report, description of Work in progress identified by area, and the failure of a Subcontractor to perform its Work and any other delays. The manpower count should be a list of foreman, journeymen, apprentices and laborers itemized by trade. The Subcontractors shall be required to prepare similar reports which will be available to the Owner upon request.

§ 3.12 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

§ 3.12.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ 3.12.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

§ 3.12.3 Samples are physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ 3.12.4 Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Contract Documents the way by which the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

§ 3.12.5 Working with the Architect, within thirty (30) days after the date of commencement of the Work, the Contractor shall agree upon a Submittal Review Schedule setting forth reasonable and adequate dates for the submission and review of all submittals. The Contractor shall review for compliance with the Contract Documents, approve and submit to the Architect Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness in accordance with the approved Submittal Schedule and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. The Contractor shall sign each submittal and stamp it with "REVIEWED FOR COMPLIANCE WITH THE CONTRACT DOCUMENTS AND APPROVED." Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by the Contractor may be returned by the Architect without action.

§ 3.12.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

§ 3.12.7 The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been approved or "approved as noted" by the Architect.

§ 3.12.8 The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples or similar submittals unless the Contractor has specifically informed the Architect in writing of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by the Architect's approval thereof.

§ 3.12.9 The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such written notice the Architect's approval of a resubmission shall not apply to such revisions.

§ 3.12.10 The Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. The Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify an appropriate performance and design criteria that such services must satisfy. If such design professional needs further information from the Architect, it shall properly so inform the Architect. The Contractor shall cause such services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional, and who shall comply with the reasonable requirements of Owner regarding qualifications and insurance. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals, provided the Owner and Architect have specified to the Contractor all performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review, approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

§ 3.12.11 The Contractor shall not be entitled to a time extension for any date of Substantial Completion if the Contractor failed to submit shop drawings, samples or submittals in accordance with the approved submittal review schedule (or, failing such schedule or an item on it, in sufficient time to allow for adequate review and approval), unless such failure was due to reasons beyond the Contractor's control. The Contractor shall submit all shop drawings and submittals at least fourteen (14) days before those shop drawings and submittals need to be released to

the appropriate Subcontractor or supplier in order to meet the Construction Schedule. Unless otherwise agreed by the Owner and Contractor, the Owner shall respond or shall cause the Architect to respond to such shop drawings and submittals within ten (10) days after their submission by the Contractor. Notwithstanding the foregoing, if the Owner and the Contractor agree to a different submittal schedule, the Owner and Contractor shall comply with the date set forth on such schedule.

§ 3.12.12 The Contractor shall assemble, for the Owner's approval, two (2) complete copies, in loose-leaf binders, of all operating and maintenance data from all manufacturers whose equipment is installed in the Project. The Contractor shall also prepare, for Owner's approval, a checklist or schedule showing the type of lubricant to be used at each point of application, and the intervals between lubrication for items of equipment.

§ 3.13 USE OF SITE

§ 3.13.1 The Contractor shall confine operations at the site to areas permitted by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials or equipment. The Contractor shall prepare and use a plan for efficient and effective use of the Project site and for secure storage of materials and equipment by the Contractor and all Subcontractors.

§ 3.13.2 If the Contractor is required to interrupt utility services to perform its Work, Contractor shall coordinate such interruption with the Owner and any affected tenants so as to avoid any damage to the Owner or the tenants. Notwithstanding anything to the contrary contained in the Contract Documents, Contractor shall use its best efforts to not interrupt utility service during business hours for any reason, but if it becomes necessary to do so, Contractor shall pay any related outage fee and/or premium or overtime charges as a result thereof, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers.

§ 3.13.3 Without limitation of any other provision of the Contract Documents, the Contractor shall not interfere with the occupancy or beneficial use of (i) any areas and buildings adjacent to the Project site and (ii) the building or garages in the event of partial occupancy.

§ 3.13.4 The Contractor shall assure free, convenient, unencumbered and direct access to properties neighboring the Project site within the alley, street and sidewalk for the owners of such properties and their respective tenants, agents, invitees and guests to the extent reasonably possible. Contractor will closely coordinate any planned disruptions of the alley area with affected adjacent property owners or property managers.

§ 3.13.5 Without prior approval of the Owner, the Contractor shall not permit any workers to use any existing facilities at the Project site, including, without limitation, lavatories, toilets, entrances, and parking areas other than those designated by the Owner.

§ 3.13.6 The Contractor shall not encroach upon adjacent property for storage of materials or any other reason, nor shall any of the Contractor's employees be permitted on said properties without written permission of the adjacent property owners and a copy of such permission provided to the Owner. The Contractor shall repair at its expense any and all damage or injury to adjacent property caused by Contractor's performance of the Work and leave the property in as good condition as before work was started, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers. Contractor shall, at its expense, indemnify, defend and hold harmless the Owner from any liability or responsibility for any claims due to such damage or injury, the cost of which shall be a Cost of the Work unless (1) it is caused by the Contractor's own negligence, or (2) it is caused by the negligence of one of the Contractor's Subcontractors or suppliers and Contractor is able to recover the cost from insurance, sureties, subcontractors or suppliers. Contractor shall make all reasonable efforts to recover such costs from any insurance, sureties, Subcontractors, or suppliers.

§ 3.13.7 Without limitation of any other provision of the Contract Documents, the Contractor shall use commercially reasonable efforts to comply with all rules and regulations promulgated by the Owner or City in

connection with the use and occupancy of the Project site and the Work, as such rules and regulations may be amended from time-to-time. The Contractor shall immediately notify the Owner in writing if, during the performance of the Work, the Contractor finds compliance with any portion of such rules and regulations to be impracticable, setting forth the problems of such compliance and suggesting alternatives through which the same results intended by such portions of the rules and regulations can be achieved. The Owner may, in the Owner's discretion, adopt such suggestions, develop new alternatives, or require compliance with the existing requirements. In the event that Contractor's Work or Schedule is unreasonably impacted by such requirements, Contractor shall be entitled to an equitable adjustment for such impact.

§ 3.13.8 The Contractor shall also comply with all insurance requirements and collective bargaining agreements applicable to the use and occupancy of the Project site and the Work.

§ 3.13.9 Only materials and equipment that are to be used directly in the Work shall be brought to and stored on the Project site by the Contractor. After equipment is no longer required for the Work, it shall be promptly removed from the Project site. Protection of construction materials and equipment stored at the Project site from weather, theft, damage, and all other adversity is solely the responsibility of the Contractor. The Contractor shall ensure that the Work, at all times, is performed in a manner that affords reasonable access, both vehicular and pedestrian, to the Project site and all adjacent areas. The Work shall be performed, to the fullest extent reasonably possible, in such a manner that public areas adjacent to the Project site shall be free from all debris, building materials, and equipment likely to cause hazardous conditions.

§ 3.13.10 The Contractor and any entity for whom the Contractor is responsible shall not erect any sign on the Project site without the prior written consent of the Owner, which may be withheld in the reasonable discretion of the Owner.

§ 3.13.11 The Contractor shall notify Owner of any crane swing, underpinning, or similar agreement with adjacent property owners that would facilitate the construction of the Project. Contractor shall comply with the requirements of all such agreements. In the event that Contractor's Work or Schedule is unreasonably impacted by the Owner's failure to obtain such agreement, Contractor shall be entitled to an equitable adjustment for any such impact.

§ 3.14 CUTTING AND PATCHING

§ 3.14.1 The Contractor shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ 3.14.2 The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold from the Owner or a separate contractor the Contractor's consent to cutting or otherwise altering the Work. In the event of cutting by the Contractor, the Contractor shall patch as reasonably required by the Owner or the Architect. Any such requests for consent by the Owner, Contractor or others shall be acted upon reasonably promptly after request therefor so as not to delay the progress of the Work.

§ 3.14.3 The Contractor shall not cut post-tension or structural supports without the prior, written authorization of the Architect and the Project's structural engineer.

§ 3.15 CLEANING UP

§ 3.15.1 The Contractor shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. The Contractor shall maintain streets, alleys, and sidewalks around the Project site in a clean condition. The Contractor shall remove all spillage and tracking arising from the performance of the Work from such areas, and shall establish a regular maintenance program of sweeping and hosing to minimize accumulation of dirt and dust upon such areas. The Contractor is to provide sufficient means for the prompt disposal of all food trash on a daily basis. The Contractor is fully responsible for all rodent control until two (2) months after Substantial Completion of the entire Work. If the Contractor's waste materials interfere with the progress of the Work or the Owner's or any tenant's operations, the Contractor shall remove such waste materials

and rubbish immediately. At completion of the Work, the Contractor shall remove from and about the Project waste materials, rubbish, the Contractor's tools, construction equipment, machinery and surplus materials.

§ 3.15.2 If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the cost thereof shall be charged to the Contractor. The Contractor's cleaning of the Project site at the completion of the Work shall also include, without limitation, leaving all floors mopped, buffed and broom-cleaned; vacuuming all carpets and soft areas; cleaning exterior and interior exposed-to-view surfaces (including all glass, windows and light fixtures); removing spots, plaster, soil and paint from ceramic tile, marble and other finished materials; removing all temporary protections, barriers, tags, labels and markings; cleaning all finishes and architectural needs (where applicable, in accordance with manufacturer's recommendations), leaving all surfaces free of dust, stains, films or other foreign substances; and removing all debris from any portion of the Project site, whether or not exposed (including, by way of example, in ductwork and on roofs). Contractor's final cleaning shall be completed upon Substantial Completion of each garage, after which the Owner shall assume responsibility for cleaning and maintenance, except as otherwise agreed upon.

§ 3.16 ACCESS TO WORK

§ 3.16.1 The Contractor shall provide the Owner and Architect access to the Work in preparation and progress wherever located.

§ 3.17 ROYALTIES, PATENTS AND COPYRIGHTS

§ 3.17.1 Unless otherwise required by the Contract Documents, the Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner, the Owner's Representative, and Architect harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Contract Documents or where the copyright violations are contained in Drawings, Specifications or other documents prepared by the Owner or Architect. However, if the Contractor has reason to believe that the required design, process or product is an infringement of a copyright, or a patent, trademark, trade name, the Contractor shall be responsible for such loss unless such information is promptly furnished to the Architect.

§ 3.18 INDEMNIFICATION

§ 3.18.1 To the fullest extent permitted by law and to the extent claims, damages, losses or expenses are not covered by Project Management Protective Liability insurance purchased by the Contractor in accordance with Section 11.3, the Contractor shall indemnify, defend, and hold harmless the City, the Owner, Owner's Representative, Architect, Architect's consultants, and agents and employees of any of them ("Indemnified Parties") from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, and expert witness fees (together, "Claims"), arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the willful breach or negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder. Nothing herein shall be construed to require Contractor to indemnify an Indemnified Party for Claims caused by or resulting solely from that Indemnified Party's own negligence. It is agreed that with respect to any legal limitations now or hereafter in effect and affecting the validity and enforceability of the indemnification obligation under this Section 3.18, such legal limitations are made a part of the indemnification obligation to the minimum extent necessary to bring Section 3.18 into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party or person described in this Section 3.18. Owner shall promptly advise Contractor in writing of any action, administrative or legal proceeding or investigation as to which this indemnification may apply, and Contractor, at Contractor's expense shall assume on behalf of the Indemnified Parties and conduct with due diligence and in good faith the defense thereof with counsel satisfactory to the Owner or other Indemnified Party, provided that (i) the Owner or other Indemnified Party shall have the right to be represented therein by advisory counsel of its own selection and at its own expense, and (ii) if the defendants in any such action include Contractor and the Owner or other Indemnified Party, and the Owner or other Indemnified Party shall have reasonably concluded that there may be legal defenses available to any of them which are inconsistent with those available to Contractor, or if Owner or other Indemnified Party concludes Contractor has a conflict of interest and cannot adequately represent Owner or

such Indemnified Party, then Owner or such Indemnified Party shall have the right to select separate counsel to participate in the defense of such action on their own behalf for which fifty percent (50%) of the cost shall be at Contractor's expense. In the event of failure by Contractor to fully perform in accordance with this indemnification paragraph, the Owner or other Indemnified Party, at the option of any of them, and without relieving Contractor of its obligations hereunder, may so perform, but all costs and expenses, including but not limited to attorneys' fees and expert fees, so incurred by Owner or such Indemnified Party in that event shall be reimbursed by Contractor to Owner or such Indemnified Party, together with interest on the same from the date that any such expense was paid by Owner or such Indemnified Party until reimbursed by Contractor, at the rate of interest provided in Section 14.2 of the Agreement. The obligations of Contractor under this Section shall survive the expiration or termination of the Contract.

§ 3.18.2 In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.

ARTICLE 4 ADMINISTRATION OF THE CONTRACT

§ 4.1 ARCHITECT

§ 4.1.1 The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative. As may be used in the Contract Documents, each of the terms - "Architect," "Architect/Engineer," "A/E," or "Designer" - shall mean the Architect or an affiliate or Architect (as may be allowed in Contract Documents), or duly authorized representatives of the Architect or affiliate acting within the scope of the particular duties entrusted to them, as allowed by the Contract Documents.

§ 4.1.2 Duties, responsibilities and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified or extended without written consent of the Owner, Contractor and Architect. Consent shall not be unreasonably withheld.

§ 4.1.3 If the employment of the Architect is terminated, the Owner shall employ a new Architect ~~against whom the Contractor has no reasonable objection~~ and whose status under the Contract Documents shall be that of the former Architect.

§ 4.2 ARCHITECT'S ADMINISTRATION OF THE CONTRACT

§ 4.2.1 The Architect will provide administration of the Contract as described in the Contract Documents. The Architect shall have authority to act only to the extent provided in the Contract Documents, unless otherwise modified by written instrument signed by Owner and Contractor, - and will be an Owner's representative (1) during construction, (2) until final payment is due and (3) with the Owner's concurrence, from time to time during the one-year period for correction of Work described in Section 12.2. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents, unless otherwise modified in writing in accordance with other provisions of the Contract.

§ 4.2.2 ~~The Architect, as a representative of the Owner, will visit the site at intervals appropriate to the stage of the Contractor's operations (1) to become generally familiar with and to keep the Owner informed about the progress and quality of the portion of the Work completed, (2) to endeavor to guard the Owner against defects and deficiencies in the Work, and (3) to determine in general if the Work is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect shall visit the Project site periodically, or upon request by the Owner, to familiarize himself with the progress and quality of the Work and to determine if the Work is proceeding in accordance with the Contract Documents. Upon the Owner's request, the Architect shall attend meetings with the Contractor's representative and the Owner to review work performed and to discuss the resolution of any questions or issues concerning the Work. At every such meeting, the Contractor shall be responsible for preparing detailed minutes of the meeting and distributing, within four (4) calendar days of the meeting, these minutes to the Owner, the Architect and any other parties attending the meeting. On the basis of his visits, the Architect shall keep the Owner informed of the progress~~

and quality of the Work and shall endeavor to guard the Owner against defects and deficiencies in the work of the Contractor. The Architect shall provide the Contractor with copies of all field inspection reports. The Architect shall also recommend a course of action to the Owner when the requirements of the Contract Documents are not being met. These visits, however, shall not relieve the Contractor of its responsibility to perform all Work in accordance with the Contract Documents. The Architect will neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents, except as provided in Section 3.3.1.

§ 4.2.3 The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of ~~and will not be~~ responsible for acts or omissions of the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

§ 4.2.4 Communications Facilitating Contract Administration. ~~Except as otherwise provided in the Contract Documents or when direct communications have been specially authorized, the Owner and Contractor shall endeavor to communicate with each other through the Architect about matters arising out of or relating to the Contract.~~ Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and material suppliers shall be through the Contractor. Communications by and with separate contractors shall be through the Owner. Contractor may communicate with the Owner directly, and shall forward a copy of any significant writing to Architect and shall advise Architect of any significant instruction, correspondence, or negotiation; provided, however, that Contractor shall communicate directly with the Architect with regard to Shop Drawing, Product Data, Samples, other submittals and Applications for Payment.

§ 4.2.5 Based on the Architect's observations of the Work and evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and, with the Owner's prior approval (which will not be unreasonably withheld), will issue Certificates for Payment in such amounts.

§ 4.2.6 The Architect will have authority and responsibility to advise the Owner to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.5.2 and 13.5.3, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a ~~decision~~ recommendation made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 4.2.7 The Architect will review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples. Such review and action by the Architect is limited to only those submittals required by the Contract Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5 and 3.12. The Architect's review shall not constitute approval of safety precautions ~~or, unless~~ otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 4.2.8 The Owner or Architect will review or prepare Change Orders and Construction Change Directives, and may authorize minor changes in the Work as provided in Section 7.4.

§ 4.2.9 The Architect will conduct inspections and advise the Owner so that the Owner can determine the date or dates of Substantial Completion and the date of final completion, will receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by

the Contractor, and will recommend that Owner issue a final Certificate for Payment upon compliance based upon the Architect's final inspection indicating that the Work complies with the requirements of the Contract Documents.

§ 4.2.10 [Not Used.] If the Owner and Architect agree, the Architect will provide one or more project representatives to assist in carrying out the Architect's responsibilities at the site. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in an exhibit to be incorporated in the Contract Documents.

§ 4.2.11 The Architect will interpret and ~~decide~~ make recommendations on matters concerning performance under and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness, in good faith, and with due consideration of the Owner's interests. ~~If no agreement is made concerning the time within which interpretations required of the Architect shall be furnished in compliance with this Section 4.2, then delay shall not be recognized on account of failure by the Architect to furnish such interpretations until 15 days after written request is made for them.~~

§ 4.2.12 Interpretations and ~~decisions~~ recommendations of the Architect will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and ~~initial decisions~~ recommendations, the Architect will endeavor to secure faithful performance by ~~both Owner and Contractor~~, will not show partiality to Owner or Contractor, ~~either~~ and will not be liable for results of interpretations or ~~decisions~~ recommendations so rendered in accordance with the Architect's standard of care, good faith.

§ 4.2.13 The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents and reasonable and if approved by the Owner in writing.

§ 4.2.14 The Architect will not be responsible for the resolution of differences or disputes between or among the Contractor, Subcontractors or Sub-subcontractors.

§ 4.2.15 The Architect's response to an RFI, or issuance of a clarification or interpretation, shall be considered an interpretation, clarification, supplemental information or an order for a minor change in the Work not involving an adjustment in the Guaranteed Maximum Price or extension of Contract Time and shall be binding, unless indicated otherwise in the Architect's response to the RFI or if Contractor submits written notice, in accordance with the Contract Documents, that such response, clarification or interpretation entitles it to such an adjustment or extension.

§ 4.3 CLAIMS AND DISPUTES

§ 4.3.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Contract terms, payment of money, extension of time or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. Claims must be ~~initiated~~ made by written notice as set forth in the Contract Documents. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 4.3.2 [Not Used.] Time Limits on Claims. ~~Claims by either party must be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the Architect and the other party.~~

§ 4.3.3 Continuing Contract Performance. Pending final resolution (including resolution under the D:B Agreement) of a Claim except as otherwise agreed in writing or as provided in Section 9.7.1 and ~~Article Section 14,~~ the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments of amounts due in accordance with the Contract Documents.

§ 4.3.4 Claims for Concealed or Unknown Conditions. If while performing the Work, the Contractor encounters concealed physical conditions at the site that adversely impact the Work and (1) differ materially from those indicated in the Contract Documents (including but not limited to the Environmental/Geotechnical Reports) and other documentation regarding existing conditions given to the Contractor or of which the Contractor is aware (collectively, the "Condition Reports"), and (2) are of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for

in the Contract Documents, or are specifically excluded in the Contractor's Assumptions and Clarifications, then Contractor shall give the Owner and Architect notice promptly before conditions are disturbed and in no event later than seven (7) days after first observance of the conditions. Owner shall have an appropriate technical consultant promptly investigate such conditions and advise Owner and Contractor whether, in the technical consultant's opinion, the conditions at the site are materially different from those indicated in the Contract Documents or Condition Reports and are of an unusual nature. If Owner and Contractor agree on whether the conditions result in an increase to the Cost of the Work, then an appropriate Change Order shall be issued increasing the Guaranteed Maximum Price. If Owner and Contractor agree on whether the conditions result in a change to the date for achieving Substantial Completion, then the parties will execute an appropriate Change Order. If the parties are unable to agree on the impact, if any, to the Cost of the Work or date for achieving Substantial Completion, then Contractor shall make a claim therefor in accordance with Section 4.3.5 of the General Conditions. Notwithstanding the foregoing, no adjustment in the date for achieving Substantial Completion or the Guaranteed Maximum Price shall be allowed to the extent that (a) the Contractor knew of those conditions prior to the date of this Agreement, (b) information (including but not limited to the Condition Reports) was given to the Contractor from which those conditions should reasonably have been discovered prior to the date of this Agreement, (c) Contractor, in developing the Guaranteed Maximum Price, considered and made allowance for uncertainty as to the condition in question, or (d) an experienced contractor who has constructed many similar projects could reasonably have discovered those conditions based upon the investigations conducted as part of the preconstruction services rendered on the Project. If conditions are encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then notice by the observing party shall be given to the other party promptly before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall so notify the Owner and Contractor in writing, stating the reasons. Claims by either party in opposition to such determination must be made within 21 days after the Architect has given notice of the decision. If the conditions encountered are materially different, the Contract Sum and Contract Time shall be equitably adjusted, but if the Owner and Contractor cannot agree on an adjustment in the Contract Sum or Contract Time, the adjustment shall be referred to the Architect for initial determination, subject to further proceedings pursuant to Section 4.4.

§ 4.3.5 CLAIMS FOR ADDITIONAL COST OR ADDITIONAL TIME Claims for Additional Cost. If the Contractor wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.6.

§ 4.3.5.1 If the Contractor wishes to make a claim for an extension of time for achieving Substantial Completion, or an increase in the Guaranteed Maximum Price, Contractor shall give Owner written notice within eight (8) days after Contractor becomes aware of the occurrence of the event giving rise to such claim and before Contractor proceeds to perform any additional Work. Within thirteen (13) days after providing such written notice, the Contractor shall submit a written statement to the Owner setting forth in detail (1) the nature and cause of the claim, and (2) an itemized and substantiated statement of the time extension or claim amount requested; or if sufficient information to do so is unavailable, then a reasonable estimate of the time extension or claim amount supported by such documentation as the Owner may request. If the Contractor has submitted a reasonable estimate, then within twenty-seven (27) days after submitting such reasonable estimate, Contractor shall submit the detailed written statement required by the previous sentence. If requested by the Owner, the Contractor shall also submit a plan for recovery from the effect of the delay so as to achieve Substantial Completion on or before the date established by the Contract Documents. Any claim not made in strict compliance with the provisions of this Section 4.3 is waived to the extent the Owner is prejudiced thereby. The Contractor acknowledges and agrees that the Owner can waive the requirements of this Section only in writing and that Contractor cannot rely on any oral statement of the Owner to the contrary.

§ 4.3.5.2 The requirements set forth in this Section 4.3.5 are of the essence. The Contractor shall have the burden to prove entitlement to any change in the Guaranteed Maximum Price or change in the Contract Time. Any change

in the Guaranteed Maximum Price or Contract Time may only be effected by an authorized written Change Order signed by the Owner or as otherwise provided in this Agreement. No change in the Work requested by the Owner, whether an alteration or an addition to the Work, shall form the basis of a change to the Guaranteed Maximum Price or to a change in the Contract Time unless and until such alteration or addition has been authorized by a written Change Order executed and issued in strict compliance with the requirements of this Section 4.3.5 and Section 7 or by written authorization to proceed with such Owner-recognized change in the Work signed by the Owner or as otherwise provided in the Contract.

§ 4.3.5.3 The Contractor's rights to a claim are governed by this Contract. No claim that the Owner has been unjustly enriched by any alteration or addition to the Work, whether or not any such unjust enrichment to the Work or to the Owner in fact exists, shall form the basis of any claim for an increase in any amount due under the Contract Documents or a change in the Contract.

§ 4.3.5.4 All claims made by the Contractor shall be accompanied by a certification by an authorized representative of the Contractor stating (1) the claim is made in good faith, (2) the supporting data are accurate and complete to the best of Contractor's knowledge and belief; and (3) the amount requested accurately reflects the contract adjustment for which the Contractor believes the Owner is liable. For subcontractor claims, the Contractor must obtain an identical certification from the Subcontractor. The Contractor shall perform a reasonable review of all claims made by Subcontractors. False certification of a claim will entitle the Owner to recover its costs of defending such claim including but not limited to attorney, accountant and expert fees.

§ 4.3.6 If the Contractor believes additional cost is involved for reasons including but not limited to (1) a written interpretation from the Architect, (2) an order by the Owner to stop the Work where the Contractor was not at fault, (3) a written order for a minor change in the Work issued by the Architect, (4) failure of payment by the Owner, (5) termination of the Contract by the Owner, (6) Owner's suspension or (7) other reasonable grounds permitted by the Contract, Claim shall be filed in accordance with this Section 4.3.

§ 4.3.7 Notwithstanding anything to the contrary in this Contract to the extent that the City is responsible for such matters under the D/B Agreement, the Contractor shall be entitled to an extension of the Contract Time and/or an increase in the Guaranteed Maximum Price only if, and only to the extent, the Owner receives such an extension or increase from the City. It is specifically understood and agreed that, as to matters for which the City is responsible under the D/B Agreement, extensions of time and increases to the Guaranteed Maximum Price under this Contract are dependent, as a condition precedent, upon the Owner receiving the same from the City under the D/B Agreement.

§ 4.3.87 Claims for Additional Time

§ 4.3.87.1 If the date of Substantial Completion is delayed at any time during the progress of the Work by (i) any change in the Work requested by the Owner in writing, (ii) the fault of the Owner, another owner's participation in the Rockville Town Square development, the Architect, the City, or any employee, consultant, or separate contractor of any of them, or (iii) "force majeure," then the Contract Time shall be reasonably extended by Change Order for such delay pursuant to the terms of this Contract. If the Contractor wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay only one Claim is necessary.

§ 4.3.8.1.1 Subject to the provisions of Sections 4.3.8.2 and 4.3.8.2.2, each party's performance under this Contract shall be excused to the extent and for the time such performance is delayed, interrupted or prevented by an event of force majeure. As used within this Contract, the term "force majeure" shall mean, the following events or circumstances, to the extent that they cause the delay of performance of any obligation hereunder by the claiming party and (except as otherwise provided below) that could not, through the use of commercially reasonable efforts by the claiming party, be mitigated:

- (a) Unavoidable strikes or lockouts or inability to procure materials or suitable substitute materials or failure of utilities necessary for performance;

- (b) Changes in any Legal Requirements relating to the development and/or construction of the Project or any element thereof that materially affect the Substantial Completion of the Project or any element thereof;
- (c) Delays (as defined by the GDA) in obtaining governmental approvals for the Project or any element thereof, provided the same have been timely submitted for approval in proper and complete form;
- (d) Delays (as defined by the GDA) (but the claiming party shall have an obligation, through the use of commercially reasonable efforts, to anticipate or mitigate the event or circumstance giving rise to the delay);
- (e) Acts of God, tornadoes or other severe windstorms, hurricanes, floods, sinkholes, fires and other comparable casualties, landslides, earthquakes, and abnormally inclement weather for the area;
- (f) Acts of war, terrorism, blockades, insurrection, riots, civil disturbances, or national, regional and local calamities;
- (g) Other acts or circumstances to the extent they would, under then existing commercial real estate practice in the Washington, DC metropolitan area, otherwise customarily constitute a Force Majeure event.

Force Majeure shall not include matters that do not cause delay.

§ 4.3.8.1.2 Notwithstanding anything to the contrary contained in this Contract, all of the parties' obligations hereunder, including without limitation, all schedules contained herein, shall be subject to force majeure. For any force majeure resulting in a delay in a party's performance, provided that the claiming party is diligently working to end the force majeure and minimize the impact of the force majeure (to the extent the same is feasible through the use by the claiming party of commercially reasonable efforts), the performance of the party claiming force majeure shall be extended by one day of each day of delay attributable to the force majeure event. Any party claiming force majeure shall provide the other parties with written notice of the force majeure within five (5) Business Days after the claiming party obtains actual knowledge of the force majeure event. The notice must describe the force majeure event, the anticipated duration of the force majeure (if known), and actions to be taken by the claiming party to end the force majeure and minimize its impact (to the extent the same are feasible through the use by the claiming party of commercially reasonable efforts.) The foregoing Section 4.3.8.1.2 is subject to the provisions of Sections 4.3.8.2 and 4.3.8.2.2.

§ 4.3.8.2 In the event of a delay to the date of Substantial Completion for which the Contractor is entitled to a time extension under Section 4.3.8, Contractor's sole damage remedy for delay shall be an increase in its General Conditions Costs & Categories (as defined in the Agreement) incurred, and the Contractor's Fee thereon. In no event shall the Contractor be entitled to receive damages for additional home office overhead or lost profits regardless of the length or cause of any delay to the Project. If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ 4.3.8.2.1 The Contractor represents, acknowledges and agrees that the scheduled Substantial Completion Dates set forth in Section 4.3 of the Agreement, are the dates by which Contractor expects to achieve Substantial Completion of the Work. Contractor waives the right to assert a claim against the Owner that the Contractor would have been able to achieve completion before the scheduled Substantial Completion Dates set forth in Section 4.3 of the Agreement, regardless of the reason, including but not limited to the acts or omissions of the Owner.

§ 4.3.8.2.2 As to force majeure, the Owner shall not be liable to the Contractor for, and the Contractor hereby expressly waives, any claims against the Owner on account of any damages, costs or expenses of any nature (that would increase the Guaranteed Maximum Price) incurred for the first sixty (60) days after the scheduled Date of Substantial Completion set forth in Section 4.3 of the Agreement that the Contractor, its Subcontractors, Sub-subcontractors, or any other person may incur as a result of any delays, interferences, suspensions, changes in sequence, failure to coordinate other contractors or vendors or the like, or that arise from or out of any act or

omission of the Owner, the Architect, or the Owner's Representative. It is specifically understood and agreed that the Contractor's sole and exclusive remedy in such event shall be an extension of the Contract Time in accordance with the terms of the Contract Documents. This Section 4.3.8.2.2 shall only be effective to the extent that the City (under its separate site work contract with the Contractor) and the Owner's affiliate (under its separate residential and retail contract with the Contractor) have not invoked their similar provisions to avoid payment for up to sixty (60) days of delay, the intent being that the sixty (60) days applies in the aggregate to delays on the entire Rockville Town Square project. It is further understood that Contractor's verifiable Costs of the Work incurred during the sixty (60) day period, including General Conditions Costs, shall be reimbursable to the extent that they are within the Guaranteed Maximum Price.

§ 4.3.8.3 The Contractor represents and warrants to the Owner that (a) the Construction Schedule contains allowances for delays caused by adverse weather conditions under normal seasonal conditions and (b) no claim for increase in the Contract Time shall be made as a result of rain, snow, cold, or other weather conditions, unless such conditions are unusually severe for the prior three (3) month period taken as a whole by comparison to the same three (3) month period for the prior ten (10) years as set forth in the U.S. National Oceanic and Atmospheric Administration records for the area where the Work is being performed.

§ 4.3.98 [Not Used.] Injury or Damage to Person or Property. If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 4.3.109 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

§ 4.3.110 Claims for Consequential Damages. The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 4.3.11 4.3.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Contract Documents.

§ 4.4 RESOLUTION OF CITY CLAIMS AND DISPUTES

§ 4.4.1 All claims, disputes, or other matters in controversy between Owner and Contractor relating to or arising out of the performance of the Agreement and the Project ("Disputes") shall be resolved in accordance with Sections 4.4, 4.5 and/or 4.6. **Decision of Architect.** Claims, including those alleging an error or omission by the Architect but excluding those arising under Sections 10.3 through 10.5, shall be referred initially to the Architect for decision. An initial decision by the Architect shall be required as a condition precedent to mediation, arbitration or litigation of all Claims between the Contractor and Owner arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Architect with no decision having been rendered by the Architect. The Architect will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 4.4.2 Disputes Involving the City. Disputes for which Owner or Contractor reasonably contend, based on the facts known to them, that the City may be responsible (the "City Disputes") shall be submitted by the Owner initially pursuant to the dispute resolution provisions in the D/B Agreement. If, after a request for an extension of time or additional compensation from Contractor, Owner reasonably believes that the event causing the delay or additional compensation is the responsibility of the City, then Owner will cooperate with and assist Contractor in presenting a

request for an extension of time or additional compensation to the City, Owner, at its election, shall either "sponsor" the Contractor's claim against the City or will allow the Contractor to pursue the claim in the Owner's name. In either case, however, the Contractor shall be responsible for presenting the claim and for bearing all of Contractor's costs and expenses of pursuing the claim. Notwithstanding the foregoing, the Owner is not obligated to sponsor or allow the Contractor to pursue a claim against the City in the event that the Owner reasonably determines that the claim is without merit and not made in good faith. The Architect will review Claims and within ten days of the receipt of the Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Architect is unable to resolve the Claim if the Architect lacks sufficient information to evaluate the merits of the Claim or if the Architect concludes that, in the Architect's sole discretion, it would be inappropriate for the Architect to resolve the Claim.

§ 4.4.3 (a) To the extent that the dispute resolution proceeding in a City Dispute finds that the matter at issue was a matter for which the City was responsible, the Contractor and Owner each agree to accept, as full and final resolution of any City Dispute, the relief as to a time extension or additional compensation obtained from the City, if any, as well as all other aspects of the final decision under the D B Agreement dispute resolution provisions following appeal or the expiration of the time for appeal. If, however, (i) the Contractor's claim asserted against the City affords the Contractor less relief than sought against the City as a result of matters for which the Owner (and not the City) was responsible, and (ii) the Contractor reasonably and in good faith, based upon the facts found in the dispute resolution proceeding against the City, contends that further relief is justified as a result of matters for which the Owner (and not the City) was responsible, then the Contractor may seek such further relief (but in no event shall seek or obtain duplicative relief) against the Owner in accordance with Section 4.6.

(b) In the event that the D B Agreement has been breached by Owner due to a breach by the Contractor, the Contractor shall be responsible for the costs occasioned by the Contractor's breach including, without limitation, all costs (i) for outside counsel, (ii) for third-party consultants, and (iii) any other litigation costs. In the event that any such claim made by the City is unsubstantiated, the Owner and Contractor shall bear their own costs for counsel and third-party consultants, as well as any other litigation costs. Owner agrees to notify Contractor of any claim made by the City for which Owner believes Contractor may be liable, to include Architect in consultations to determine the appropriate responses to the City Claims, and to allow the Contractor to participate in any such proceeding related thereto to the extent reasonably necessary for Contractor to protect its interests. In evaluating Claims, the Architect may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Architect in rendering a decision. The Architect may request the Owner to authorize retention of such persons at the Owner's expense.

§ 4.4.4 Contractor and Owner agree to stay the prosecution of any litigation between them and to waive the benefit of the continued running of any applicable statute of limitations during the period of such stay so long as the claim relates in whole or in part to a City Dispute. Contractor and Owner agree to the issuance of a stay order by a court having jurisdiction to effectuate the intent of this Section. Each party will cause all parties with whom it is in privity of contract as to this Project (except as to Owner's contract with the City) to accept a provision requiring such party (and lower tier subcontractors and subconsultants) to stay any litigation relating to a City Dispute and accept resolution of those claims in accordance with Sections 4.4.2 and 4.4.3(a). If the Architect requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of such request, and shall either provide a response on the requested supporting data, advise the Architect when the response or supporting data will be furnished or advise the Architect that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Architect will either reject or approve the Claim in whole or in part.

§ 4.4.5 [Not Used.] The Architect will approve or reject Claims by written decision, which shall state the reasons therefor and which shall notify the parties of any change in the Contract Sum or Contract Time or both. The approval or rejection of a Claim by the Architect shall be final and binding on the parties but subject to mediation and arbitration.

§ 4.4.6 [Not Used.] When a written decision of the Architect states that (1) the decision is final but subject to mediation and arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's decision becoming final and binding

upon the Owner and Contractor. If the Architect renders a decision after arbitration proceedings have been initiated, such decision may be entered as evidence, but shall not supersede arbitration proceedings unless the decision is acceptable to all parties concerned.

§ 4.4.7 Upon receipt of a Claim against the Contractor or at any time thereafter, ~~the Architect or the Owner~~ may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, ~~the Architect or the Owner~~ may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 4.4.8 [Not Used.] If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the Claim by the Architect, by mediation or by arbitration.

§ 4.5 [Not Used.] MEDIATION

§ 4.5.1 [Not Used.] Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5 shall, after initial decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to mediation as a condition precedent to arbitration or the institution of legal or equitable proceedings by either party.

§ 4.5.2 [Not Used.] The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Mediation Rules of the American Arbitration Association currently in effect. Request for mediation shall be filed in writing with the other party to the Contract and with the American Arbitration Association. The request may be made concurrently with the filing of a demand for arbitration but, in such event, mediation shall proceed in advance of arbitration or legal or equitable proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 4.5.3 [Not Used.] The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 4.6 RESOLUTION OF NON-CITY DISPUTES ARBITRATION

§ 4.6.1 Subject to Section 4.2 and except to the extent set forth in Section 4.4.3(a), all Disputes between the Owner and the Contractor ("Non-City Disputes") shall be resolved by litigation in a court of competent jurisdiction in the State of Maryland. Any Claim arising out of or related to the Contract, except Claims relating to aesthetic effect and except those waived as provided for in Sections 4.3.10, 9.10.4 and 9.10.5, shall, after decision by the Architect or 30 days after submission of the Claim to the Architect, be subject to arbitration. Prior to arbitration, the parties shall endeavor to resolve disputes by mediation in accordance with the provisions of Section 4.5.

§ 4.6.2 In the event of any litigation between the parties arising out of a Non-City Dispute, the prevailing party will be entitled to recover its attorneys' fees and expert fees, as well as all costs and expenses of such litigation. Claims not resolved by mediation shall be decided by arbitration which, unless the parties mutually agree otherwise, shall be in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect. The demand for arbitration shall be filed in writing with the other party to the Contract and with the American Arbitration Association, and a copy shall be filed with the Architect.

§ 4.6.3 [Not Used.] A demand for arbitration shall be made within the time limits specified in Sections 4.4.6 and 4.6.1 as applicable, and in other cases within a reasonable time after the Claim has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such Claim would be barred by the applicable statute of limitations as determined pursuant to Section 13.7.

§ 4.6.4 [Not Used.] Limitation on Consolidation or Joinder. No arbitration arising out of or relating to the Contract shall include, by consolidation or joinder or in any other manner, the Architect, the Architect's employees or consultants, except by written consent containing specific reference to the Agreement and signed by the Architect, Owner, Contractor and any other person or entity sought to be joined. No arbitration shall include, by consolidation or joinder or in any other manner, parties other than the Owner, Contractor, a separate contractor as described in Article 6 and other persons substantially involved in a common question of fact or law whose presence

is required if complete relief is to be accorded in arbitration. No person or entity other than the Owner, Contractor or a separate contractor as described in Article 6 shall be included as an original third party or additional third party to an arbitration whose interest or responsibility is insubstantial. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a Claim not described therein or with a person or entity not named or described therein. The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 4.6.5 [Not Used.] Claims and Timely Assertion of Claims. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 4.6.6 [Not Used.] Judgment on Final Award. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

§ 4.7 JOINDER

§ 4.7.1 To the extent that the Contractor's rights or liabilities may be involved, the parties hereby consent to the joinder of Contractor into any litigation (involving parties other than the City) being conducted by Owner with respect to the Project. Furthermore, Owner and Contractor hereby consent to the joinder of other parties involved in the Project into any proceeding being conducted between Owner and Contractor to the extent that the third party's rights and liabilities may be involved.

ARTICLE 5 SUBCONTRACTORS

§ 5.1 DEFINITIONS

§ 5.1.1 A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work ~~at the site~~ and includes, but is not limited to, trade subcontractors, suppliers, manufacturers and materialmen. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a separate contractor or subcontractors of a separate contractor.

§ 5.1.2 A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work ~~at the site.~~ The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

§ 5.2 AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

§ 5.2.1 Unless otherwise stated in the Contract Documents or the bidding requirements, the Contractor, as soon as practicable after award of the Contract, shall furnish in writing to the Owner ~~through the Architect~~ the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design), trade specialty and subcontract amount proposed for each principal portion of the Work. Each proposed Subcontractor shall be financially sound and shall be experienced and skilled to perform its portion of the Work. The Owner Architect will promptly reply to the Contractor in writing stating whether or not the Owner or the Architect, after due investigation, has reasonable objection to any such proposed person or entity. The Contractor shall, upon request, furnish Owner with copies of all executed Subcontracts and purchase orders (including prices) with no deletions. Failure of the Owner or Architect to reply promptly shall constitute notice of no reasonable objection.

§ 5.2.2 The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

§ 5.2.3 If the Owner or Architect has ~~reasonable~~ objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no ~~reasonable~~ objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work at a price that was not artificially or unreasonably low, the ~~Contract Sum~~ Guaranteed Maximum Price and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the ~~Contract Sum~~ Guaranteed Maximum Price or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

§ 5.2.4 The Contractor shall not change a Subcontractor, person or entity previously selected if the Owner or Architect makes ~~reasonable~~ objection to such substitute.

§ 5.2.5 Acceptance of or failure to object to any or all listed Subcontractors by the Owner or Architect does not relieve Contractor from any responsibility for its Subcontractors.

§ 5.3 SUBCONTRACTUAL RELATIONS

§ 5.3.1 By appropriate written agreement, ~~written where legally required for validity~~, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work, which the Contractor, by these Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, ~~prior to the execution of the subcontract agreement~~, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement which may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors. The Contractor shall include in every Subcontract a provision providing (a) for the assignment of all Subcontracts to the Owner and/or the City, (b) that each Subcontractor agrees to perform its Work for the Owner and/or the City upon such assignment, and (c) the Owner and/or the City shall only be responsible for those obligations of Contractor accruing after the Owner's or City's exercise of its right to accept assignment of the Subcontract. In addition, the Subcontract shall provide that the Subcontractor shall not be entitled to any additional payment in the event of an assignment except as set forth in Section 5.4.2. The Contractor shall also require its surety to approve such assignments. The Subcontracts shall also contain a provision that if a Subcontract is terminated the Subcontractor shall notify the appropriate government authorities and close out his permit at no additional cost.

§ 5.3.2 In connection with all activities related to the performance of this Contract, Contractor is fully responsible for acts and omissions of Subcontractors, Sub-subcontractors and persons either directly or indirectly employed by them, or under their control, as Contractor is for its own employees.

§ 5.4 CONTINGENT ASSIGNMENT OF SUBCONTRACTS

§ 5.4.1 Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner and/or to the City provided that:

- .1 assignment is effective only after termination of the Contract by the Owner ~~for cause pursuant to Section 14.2~~ and only for those subcontract agreements which the Owner and/or the City accepts by notifying the Subcontractor and Contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

§ 5.4.2 Upon such assignment, if the Work in connection with a particular subcontract has been suspended for more than thirty (30) days after termination of the Contract by Owner, the Subcontractor's compensation shall be equitably adjusted for increases in direct cost incurred by that Subcontractor as a ~~resulting from~~ result of the suspension.

§ 5.4.3 Except as provided in the last sentence of this Section 5.4.3, the Owner assumes no liability in connection with the Contractor's use of any Subcontractor to perform its obligations under this Contract. All rights and remedies of any Subcontractor or Sub-subcontractor shall be against Contractor; provided, however, that nothing herein shall be construed to affect any Subcontractor's or Sub-Subcontractor's in rem rights (if any) against the Project arising under applicable lien laws. Each subcontract shall specifically provide that the Owner shall only be

responsible to the Subcontractor for those obligations of the Contract that accrue subsequent to the Owner's exercise of any rights under a conditional assignment.

§ 5.5 All suitably stored materials, supplies and equipment, wherever located when paid for by the Owner, shall automatically become the absolute property of the Owner. The Contractor, any Subcontractor or any Sub-subcontractor shall deliver to the Owner appropriate bills of sale. All such materials, supplies and equipment shall be free of liens and encumbrances.

ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ 6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ 6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and to award separate contracts in connection with other portions of the Project or other construction or operations on the site, ~~under Conditions of the Contract identical or substantially similar to these including those portions related to insurance and waiver of subrogation.~~ If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in Section 4.3 the Contract Documents.

§ 6.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

§ 6.1.3 The ~~Owner~~ Contractor shall provide for coordination of the activities of the Owner's own forces and of each separate contractor (including the installation of tenant-furnished equipment) with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Contractor shall make any Owner-approved revisions to the construction schedule, ~~deemed necessary after a joint review and mutual agreement.~~ The construction schedules shall then constitute the schedules to be used by the Contractor, separate contractors and the Owner until subsequently revised. If the Contractor claims that delay or additional cost is involved because of such action by the Owner, the Contractor shall make such Claim as provided in the Contract Documents.

§ 6.1.4 ~~[Not Used.] Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces, the Owner shall be deemed to be subject to the same obligations and to have the same rights which apply to the Contractor under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6 and Articles 10, 11 and 12.~~

§ 6.2 MUTUAL RESPONSIBILITY

§ 6.2.1 The Contractor shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

§ 6.2.2 If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a separate contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly report to the Architect and Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Contractor so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work, except as to latent defects not then reasonably discoverable.

§ 6.2.3 ~~The costs caused by Owner shall be reimbursed by the Contractor for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction shall be borne by the party responsible therefor, subject to the rights and limitations provided elsewhere in the Contract Documents. of the Contractor. The Owner shall be responsible to the Contractor for costs incurred by the Contractor because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.~~

§ 6.2.4 The Contractor shall promptly remedy damage wrongfully caused by the Contractor to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5. The

Owner shall promptly cause the remedy of damage to the Work caused by the Owner's own forces or by Owner's separate Contractors to completed or partially completed construction or property of the Contractor.

§ 6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

§ 6.2.6 During the progress of the Work, it may be necessary for employees of the Owner, its affiliates, tenants or others to work in or about the Project. The Contractor shall afford such access to such employees or others as the Owner deems necessary. Except as approved by Owner in writing, the Contractor shall not impede or interfere with the ongoing business operations of the Owner or others at the site of the Work. Neither the Owner nor the Owner's separate contractors will unreasonably impede or interfere with the operations or Work of the Contractor.

§ 6.3 OWNER'S RIGHT TO CLEAN UP

§ 6.3.1 If a dispute arises ~~among between~~ the Contractor ~~and separate, separate contractors and the Owner~~ as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and ~~the Architect will~~ allocate the cost among those responsible, subject to the Contractor's right to make a claim per Section 4.3.5.

ARTICLE 7 CHANGES IN THE WORK

§ 7.1 GENERAL

§ 7.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, or Construction Change Directive, ~~or order for a minor change in the Work,~~ subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

§ 7.1.2 A Change Order shall be based upon agreement among the Owner, ~~the City, and the Contractor, and Architect,~~ a Construction Change Directive requires agreement by from the Owner and Architect and may or may not be agreed to by the Contractor, ~~an order for a minor change in the Work may be issued by the Architect alone.~~

§ 7.1.3 Changes in the Work shall be performed under applicable provisions of the Contract Documents, and the Contractor shall proceed promptly, unless otherwise provided in the Change Order, or Construction Change Directive, ~~or order for a minor change in the Work.~~

§ 7.2 CHANGE ORDERS

§ 7.2.1 A Change Order is a written instrument prepared by the ~~Architect~~ Contractor and signed by the Owner, Contractor and Architect, stating their agreement upon all of the following:

- .1 change in the Work, if any;
- .2 the amount of the adjustment, if any, in the ~~Contract Sum~~ Guaranteed Maximum Price; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ 7.2.2 Methods used in determining adjustments to the ~~Contract Sum~~ Guaranteed Maximum Price may include those listed in Section 7.3.3.

§ 7.2.3 Except as otherwise agreed to in writing by the parties, a Change Order shall include all of the Contractor's costs associated therewith.

§ 7.2.4 The Contractor shall not accept any request for a Change Order from any person other than the Owner and may not perform any work asserted to constitute a change in the Work until the Owner has approved the Change Order in writing, unless the Owner issues a CCD and authorizes the Contractor, in writing, to proceed with a change prior to the Owner's final approval. Owner may competitively bid changes in the Work and Contractor, Subcontractor and suppliers shall provide Owner with all documents Owner requests to facilitate such competitive bidding of changes in the Work.

§ 7.2.5 Owner may request additive and deductive changes in the Work by giving Contractor a written "Change Order Request" itself or through the Architect, setting forth in detail the nature of the requested change. Upon receipt of a Change Order Request, Contractor shall promptly (but in no event later than fifteen (15) days after receipt of the Change Order Request) return to Owner, Owner's Representative and Architect three (3) completed

copies of its "Change Order Proposal" setting forth in detail, with a suitable breakdown by trades and work classifications, Contractor's estimate of the changes in the Guaranteed Maximum Price (together with appropriate data acceptable to Owner supporting such estimate, including but not limited to bids, cost estimates, and applicable unit prices) and a proposed adjustment to the Contract Time resulting from such Change Order Request. If Owner approves in writing Contractor's Change Order Proposal, Owner will issue and Contractor will execute and accept a Change Order and the Guaranteed Maximum Price and the Contract Time shall be adjusted as set forth in such Change Order. If Contractor's Change Order Proposal is not agreed to by Owner in writing or if Contractor fails to submit a Change Order Proposal to Owner within such fifteen (15) day period and Owner thereafter issues a written Construction Change Directive directing Contractor to perform the requested change in the Work, Contractor shall proceed with the Work pursuant to Section 7.3 hereof. Agreement on any Change Order shall constitute a final settlement on all matters related to the change in the Work including, but not limited to, all direct, indirect, and "cumulative effect" costs associated with such change and any and all adjustments to the Contract Sum, Guaranteed Maximum Price, and Contract Time, subject to performance thereof and payment therefor pursuant to the terms of this Contract. When both additions and credits covering related Work or substitutions are involved in any one change, the allowance for overhead and profit shall be figured on the basis of the net increase, if any, with respect to that change.

§ 7.2.6 The Owner and Architect will review properly prepared, timely requests by the Contractor for changes in the Work, including adjustments to the Guaranteed Maximum or Contract Time. Contractor's request for a change in the Work shall be properly prepared, accompanied by the proposed cost, sufficient supporting data and information to permit the Owner and Architect to make a reasonable determination without extensive investigation to determine if the change is warranted or can be considered without the preparation of additional drawings or specifications.

§ 7.3 CONSTRUCTION CHANGE DIRECTIVES

§ 7.3.1 A Construction Change Directive is a written order prepared by the Architect and signed by the Owner, and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum, Guaranteed Maximum Price or Contract Time, or both. Notwithstanding Section 7.2.5, the Owner at any time may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum, Guaranteed Maximum Price and Contract Time being adjusted accordingly.

§ 7.3.2 A Construction Change Directive shall may be used in the absence of total agreement on the entitlement to or terms of a Change Order.

§ 7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, Guaranteed Maximum Price, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and Contractor and any affected Subcontractor shall receive a mark-up calculated in accordance with Section 5.3 of the Agreement; a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section 7.3.6.

§ 7.3.4 Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment, if any, in the Contract Sum, Guaranteed Maximum Price or Contract Time.

§ 7.3.5 A Construction Change Directive signed by the Contractor indicates the agreement of the Contractor therewith, including adjustment in Contract Sum, the Guaranteed Maximum Price and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 7.3.6 If the Contractor does not respond promptly or disagrees with the method for adjustment, if any, in the Contract Sum, Guaranteed Maximum Price, the method and the adjustment shall be determined by the

~~Architect~~Owner on the basis of reasonable ~~expenditures~~costs and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, a reasonable allowance for overhead and ~~profit~~determined as set forth herein, and the Contractor and any affected Subcontractor shall receive a mark-up calculated in accordance with Section 5.3 of the Agreement. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the ~~Architect~~Owner may prescribe, an itemized accounting together with appropriate supporting data. ~~Unless otherwise provided in the Contract Documents, costs~~Costs for the purposes of this Section 7.3.6 shall be as set forth in Articles 7 and 8 of the Agreement, ~~shall be limited to the following:~~

1. ~~[Not Used.] costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;~~
2. ~~[Not Used.] costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;~~
3. ~~[Not Used.] rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;~~
4. ~~[Not Used.] costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and~~
5. ~~[Not Used.] additional costs of supervision and field office personnel directly attributable to the change.~~

§ 7.3.7 The amount of credit to be allowed by the Contractor to the Owner for a deletion or change which results in a net decrease in the ~~Contract Sum~~Guaranteed Maximum Price shall be actual net cost as confirmed by the ~~Architect~~Owner. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

§ 7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work ~~shall may~~, at Owner's reasonable election and if the City and Lender (if any) agrees, be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the ~~Architect~~Owner will make an interim determination for purposes of monthly certification for payment for those costs. That determination of cost shall adjust the ~~Contract Sum~~Guaranteed Maximum Price on the same basis as a Change Order, subject to the right of either party to disagree and assert a claim in accordance with ~~Article~~ Section 4.

§ 7.3.9 When the Owner and Contractor agree with the ~~determination made by the Architect~~ concerning the adjustments in the ~~Contract Sum~~Guaranteed Maximum Price and Contract Time, ~~or otherwise reach agreement upon the adjustments~~, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ 7.4 MINOR CHANGES IN THE WORK

§ 7.4.1 The Architect will have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on the Owner and Contractor if approved by the Owner. The Contractor shall carry out such written orders promptly.

§ 7.5 CONTRACTOR'S REPRESENTATION REGARDING COST OR CREDIT TO OWNER FOR CHANGED WORK

§ 7.5.1 If the cost to the Owner of changed work is determined by the lump sum method, ~~the Contractor warrants that the charge to the Owner does not exceed the sum of (a) any Subcontractor's charge to the Contractor for such work and (b) the Contractor's best estimate of the actual cost of the Contractor's work plus the permitted fee.~~ If the cost to the Owner of changed work is determined on a time and materials basis, the Contractor warrants that the cost of any addition represents the true and actual cost, including Contractor's permitted fee, of such addition to the Contractor, Subcontractor or Sub-subcontractor or other entity involved in such addition. If the changed work will result in a reduction in the cost to the Owner, the Contractor warrants that the amount of any deduction represents the amount of deduction to the Contractor by the appropriate Subcontractor or Contractor's actual cost of the Work where the deduction involves Work that the Contractor itself will perform.

§ 7.6 There shall be no change in the Work, whether an alteration or addition to the Guaranteed Maximum Price or to any amounts due under the Contract Documents or to a change in the Contract Time, unless and until such alteration or addition has been authorized by a written Change Order executed and issued in accordance and strict compliance with the requirements with this Section 7 or by CCD or written authorization to proceed with such change in the Work signed by the Owner. The requirements set forth in this Section 7.6 are of the essence. Nothing in this Section 7.6 shall be construed to limit, in any way, the Contractor's right to assert a claim. Any claim must be made in accordance with Section 4.3.5.

§ 7.7 Notwithstanding anything to the contrary in this Contract (but subject to the Owner's obligation to pursue a claim against the City as described in Section 4.4.2), to the extent that the City is responsible for such changes under the D/B Agreement, the Contractor shall be entitled to a Change Order only if, and only to the extent, the Owner receives such a change order from the City. It is specifically understood and agreed that a Change Order under this Contract is dependent, as a condition precedent, upon the Owner receiving the same from the City under the D/B Agreement to the extent that the City is responsible for such changes under the D/B Agreement. To enable the City to make a determination as to potential change orders, the Contractor shall provide all information required by, and otherwise comply with, the Possible Change Order, Change Modification, and Change Order provisions set forth in Section 8.1.4 of the Part 2 Design/Build Agreement.

ARTICLE 8 TIME

§ 8.1 DEFINITIONS

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Architect and approved by the Owner in accordance with Section 9.8.

§ 8.1.4 The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

§ 8.2 PROGRESS AND COMPLETION

§ 8.2.1 Time limits stated in the Contract Documents for Contractor's performance of the Work are of the essence of the Contract. By executing the Agreement the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence operations on the site or elsewhere prior to the effective date of insurance required by Article Section 11 to be furnished by the Contractor and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Contract Documents or a notice to proceed given by the Owner, the Contractor shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.3 DELAYS AND EXTENSIONS OF TIME

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner, City, or Architect, or of an employee of any of them, either, or of a separate contractor employed by any of them, the Owner, or by changes ordered in the Work, or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Contractor's control, any "force majeure" as defined in Section 4.3.8.1.1, or by delay authorized by the Owner pending mediation and arbitration, or by other causes which the Architect determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Architect may determine. Contractor shall not be entitled to any damages, or to an extension of the Contract Time, for such a delay except as expressly set forth in Section 4.3.8.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section 4.3.

§ 8.3.3 [Not Used.] This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

ARTICLE 9 PAYMENTS AND COMPLETION

§ 9.1 CONTRACT SUM

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The Contract Sum shall not exceed the initial GMP as adjusted under this Contract.

§ 9.2 SCHEDULE OF VALUES

§ 9.2.1 If not previously submitted by Contractor, no fewer than fourteen (14) days prior to submitting the first Application for Payment, the Contractor shall submit to the Owner the verification required by Section 15.2 of the General Conditions, the Performance and Payment Bonds (if required), the insurance certificates, a listing of all Subcontractors (awarded at that time), with supporting data received from Subcontractors (including Subcontractor schedules of values). The Schedule of Values shall incorporate costs for each Subcontractor for each portion of the Work and for General Condition Costs and Contractor's overhead and profit for the Work, and projecting cash disbursements throughout the Project, including dates when the Contractor anticipates requesting the Owner to pay for specifically identified material before such material is incorporated into the Work. The Schedule of Values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. The Contractor shall update the Schedule of Values, showing actual performance as compared to the original projection, as part of the Monthly Status Report. Before the first Application for Payment, the Contractor shall submit to the Architect a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. This schedule, unless objected to by the Architect, shall be used as a basis for reviewing the Contractor's Applications for Payment.

§ 9.3 APPLICATIONS FOR PAYMENT

§ 9.3.1 The Contractor shall submit to the Owner and Architect an itemized Application for Payment for each garage, notarized, showing in complete detail all moneys paid out, costs incurred by Contractor on account of the Work during the previous period for which Contractor is to be reimbursed or the value of the Work performed; and the amount of Contractor's payment due as provided in the Owner-Contractor Agreement, lien waivers from Contractor and each Subcontractor, sub-subcontractor or supplier through the date of the last prior payment, and, if requested by the Owner, payrolls (if applicable) for all labor costs, copies of canceled checks, the method of allocating the Costs of the Work (e.g., hourly rates and unit costs), all invoices or bills received from vendors (if necessary) and copies of Subcontractor requisitions included in the cost of the Work and rate of cost and reflecting retainage as set forth in the Owner-Contractor Agreement. At least ten days before the date established for each progress payment, the Contractor shall submit to the Architect an itemized Application for Payment for operations completed in accordance with the schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Contractor's right to payment as the Owner or Architect may require, such as copies of requisitions from Subcontractors and material suppliers, and reflecting retainage if provided for in the Contract Documents.

§ 9.3.1.1 As provided in Section 7.3.8, such applications may include requests for payment on account of changes in the Work which have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

§ 9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Contractor does not intend to pay to a Subcontractor or material supplier, unless (a) such Work has been performed by others whom the Contractor intends to pay, or (b) if the Contractor is otherwise entitled to withhold such payment after written notice of such to, and written approval by, Owner (which shall not be unreasonably withheld).

§ 9.3.2 The Owner will not make a progress payment for materials stored on-site or off-site, unless the Owner, in its reasonable discretion and if the Lender and City approve, authorizes in writing payment for such materials in accordance with this section and only if such materials are stored properly and securely on-site or off-site, protected from the elements and vandalism. If made, payment by the Owner for materials suitably stored on-site or off-site will be limited to the cost of the materials (defined as the amount set forth on the manufacturer's invoice or shipping